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## CHAPTER 175 - PLANNING BOARD DEVELOPMENT REGULATIONS

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## GENERAL PROVISIONS

### § 175-01. Authority.

Under the authority vested in the Planning Board of the Town of Lexington by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts, the Home Rule Amendment, Chapter 40A, the Zoning Act, of the General Laws of the Commonwealth of Massachusetts and Chapter 41, Improved Method of Municipal Planning, and the Subdivision Control Law of the General Laws, the Planning Board adopts these Development Regulations to provide policies, standards, and procedures for planned residential and commercial development in the Town of Lexington, Massachusetts.

### § 175-02. Purpose; objectives; evaluation criteria.

- A. These Development Regulations compile in one document, for ease of administration by the Board and understanding by applicants, the various rules, regulations, procedures, and fees which the Planning Board formerly had in separate documents. The Subdivision Rules and Regulations, adopted under MGL c. 41, § 81Q, the Subdivision Control Law, are set forth in Part 2. The Rules and Regulations for Special Permits, when the Planning Board acts a special permit granting authority, adopted under MGL c. 40A, § 9, the Zoning Act, are set forth in Part 3, Article XI.
- B. Objectives. The Planning Board's objectives are that:
  - (1) All sites within Lexington for which development approval is sought under these Regulations shall be designed and developed in a safe, efficient, and aesthetically pleasing manner;
  - (2) The arrangement of all uses and improvements should reflect the natural capabilities and limitations of the site as well as the characteristics and limitations of adjacent property;
  - (3) The various structures, use areas, and elements of the site design should be integrated by design into a unified whole except in those cases where separating particular uses is appropriate; and
  - (4) The development should be visually harmonious as viewed from both within and from outside the site.
- C. Evaluation criteria. The following objectives and criteria shall be used in evaluating all development proposals:
  - (1) Ensure that the development of additional housing and commercial buildings does not detract from the livability, scale, character or economic value of existing residential neighborhoods and commercial areas;
  - (2) Encourage greater diversity of housing opportunities in Lexington to meet the needs of a population that is diversified with respect to age, number of persons in a household, and income levels;
  - (3) Permit greater flexibility and design freedom in land development;

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- (4) Encourage sensitively planned development by:
    - (a) Promoting a high standard in the design of development sites and of individual buildings;
    - (b) Preserving open space for conservation, outdoor recreation or park purposes;
    - (c) Encouraging the preservation, and minimum disruption, of the existing natural features of land and minimizing impacts on environmentally sensitive areas;
    - (d) Preserving, where applicable, historically or architecturally significant buildings or places; and
    - (e) Permitting different types of structures and residential uses to be combined in a planned interrelationship;
  - (5) Facilitate a detailed review, by Town officials and by the public, of developments that either:
    - (a) Have an impact on public facilities and services and on adjoining land; or
    - (b) Are large enough to constitute a self-contained environment;
  - (6) Promote the efficient and economical provision of public facilities such as utilities and streets; and
  - (7) Assure that the number of dwelling units or commercial buildings allowed will be compatible with surrounding land uses and that traffic and public services will not be adversely impacted.

§ 175-03. Administration and enforcement.

- A. Official responsible. The Planning Director is authorized to be responsible for the interpretation, administration and enforcement of the Development Regulations, including the Subdivision Regulations. The Building Commissioner or designee is responsible for the interpretation, administration and enforcement of the Zoning Bylaw. Where these Regulations refer to the Planning Director, the Senior Planner is authorized to act in the absence of the Planning Director and shall have the authority and responsibility these Regulations imply. In the absence of both the Planning Director and the Senior Planner, the Town Manager may designate an official to act in behalf of the Planning Director.
- B. Relief from personal liability. Insofar as the law allows, while acting for the Town of Lexington, any official designated under the provisions of Subsection A above charged with the administration, interpretation or enforcement of the Development Regulations, including the Subdivision Rules and Regulations, shall not be deemed to be personally liable in the discharge of his/her official duties.
- C. Administrative procedures. The Planning Director is authorized to formulate administrative procedures necessary to uniformly administer and enforce these Regulations.

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- D. Right of entry. In the discharge of his/her official duties, the Planning Director, or any official authorized to act in his/her absence, shall have the authority to enter any site to administer or enforce the provisions of these Regulations.

§ 175-04. Development actions and Planning Board meetings.

- A. Objectives. The Planning Board's objectives for the effective conduct of its public meetings are to:
- (1) Provide an opportunity for Board members and staff to review items dealing with development activities in advance of meetings;
  - (2) Assure applicants that items will be acted upon promptly once they are presented to the Board;
  - (3) Maintain an orderly schedule for dealing with development activities in relation to the Planning Board's other nondevelopment responsibilities; and
  - (4) Provide opportunities and procedures for interested neighbors and Town departments, boards and committees to have an opportunity to review proposed development activities.
- B. All actions at public meetings. All reviews, decisions and other actions that the Planning Board makes in relation to development, as covered in these Development Regulations, hereinafter referred to as "development activities," shall be made in a public meeting of the Planning Board for which public notice has been given under MGL c. 39, § 23B.
- C. Applications submitted through Planning Department. Applications and all other requests for action on development activities shall be submitted first to the Planning Department staff to be reviewed and scheduled for action at a Planning Board meeting. Such requests shall not be presented directly to the Planning Board at a meeting.
- D. Items placed on Board agenda when ready for action. Applications and all other requests for action on development activities shall not be placed on the agenda for a Planning Board meeting until they are ready for the Board to take action. A request for action on a development activity is not considered ready for Board action until it is complete, all necessary information has been supplied, and any form or document is ready for approval. Failure to supply all necessary information, in complete form, is grounds for the application not to be accepted for processing or for the Planning Board's action to be delayed.
- E. Review prior to Board meeting. Prior to any action by the Board, applications and all other requests for action on development activities shall be reviewed by the Planning Department staff and, as applicable, other Town departments, boards and committees. The application and related documentation will be distributed to the Board with the preliminary agenda so that the Board members may review it prior to the meeting. The Planning Board generally will not take action on any application or other requests for action on development activities that have not been filed with, and reviewed by, the Planning Department by the time the agenda is prepared and distributed to members prior to the meeting or respond to plans or proposals presented to it for the first time at a meeting.

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§ 175-05. Effective date; repealer; amendments.

- A. Effective date. These Regulations shall be effective on November 19, 1993.
- B. Repeal of prior regulations. Upon the effective date of these Regulations, the "Development Regulations, Town of Lexington," adopted September 8, 1986, are repealed.
- C. Amendment. These Regulations may be amended from time to time by a vote of the Planning Board. Those parts of these Regulations that include or constitute the Subdivision Rules and Regulations may be amended only after a public hearing for which sufficient notice has been given in the manner prescribed in MGL c. 41, § 81Q.

§ 175-06. Interpretation of forms and charts.

- A. Forms. The Appendix<sup>1</sup> contains sample forms for the administration of these Regulations. These forms are not part of the Regulations. Forms may be added or deleted and the content of the forms may be revised from time to time by administrative action of the Planning Board; such changes are not amendments to these Regulations and may be made without holding a public hearing.
- B. Notes and charts. These Regulations contain comments, charts and other illustrations, which may be interspersed with the text of the regulations. They are intended to assist the applicant in understanding the Regulations and the Planning Board's policies and procedures but are not part of these Regulations. The notes are set off in a different typeface or in a box or are labeled to show their status as comments, charts and illustrations.

§ 175-07. Separability.

The provisions of these Regulations are separable. If any provision of these Regulations, or in the administration thereof any decision or determination, is adjudged by a court of competent jurisdiction to be unconstitutional, invalid or void, the decision shall not affect any other provision of these Regulations or the administration thereof.

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<sup>1</sup>Editor's Note: The Appendix material is on file at the office of the Planning Department.

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## Article II. TYPES OF PLANS; APPLICATION PROCEDURES

### § 175-08. Objectives.

The Planning Board's objectives are to have sufficient information available in a timely manner:

- A. To permit the Planning Board to conduct a thorough review of the proposed plan, to permit review by other Town departments and boards and to obtain their recommendations and to provide for public review and comment, all within the brief time periods set forth in MGL c. 40A and c. 41;
- B. To provide detailed instructions and aids so that an applicant or a developer can comply with the requirements and procedures; and
- C. To reduce the time and expense to the Board, the Town and the applicant caused by repetitive submissions of partially completed plans.

### § 175-09. Responsibilities of applicant.

- A. Complete and correct information. The applicant is responsible for the submittal of complete and correct information to the Board, which if not provided may constitute grounds for the rejection of a plan for review, disapproval of a plan or rescission of a previously approved plan.
- B. Obtain all permits and rights. The applicant shall obtain all necessary permits, licenses, releases or rights. Failure, or inability, to do so may constitute grounds for rejection of a plan for review, disapproval of a plan or rescission of a previously approved plan.
- C. Expense of preparing plans and other documents. The applicant shall be responsible for the expense of the design, preparation of legal documents, studies, review of plans, recording and filing of plans, reproduction of plans and copies thereof or studies and reports related thereto and all other expenses in relation to the submittal, review, and actions on an application for approval or endorsement of a plan whether it is approved by the Board or not. If applicable, the applicant shall be responsible for the costs of publishing the legal notice of the public hearing. In the event the Planning Board is required to hold the public hearing in a building other than the Town Office Building and if there are costs associated with meeting in another building, such as custodial services, the applicant shall be responsible for those costs. See also § **175-12D(7)** of these Regulations for the Board's fee schedule.
- D. Consent of property owner required for all applications. When the applicant does not own the property shown in a plan filed with an application pursuant to these Regulations, the applicant shall state the nature of his or her interest in the property and the property owner shall sign the application for plan approval or endorsement. An application made by someone other than the property owner shall not be considered to be properly submitted and will not be accepted for processing unless the property owner has signed the application. Where the owner is a corporation, corporate documents must be submitted indicating who has authority to enter into an agreement on behalf of the corporation.
- E. Rights of others in land shown on plan. The Planning Board's approval of a plan does not affect any rights others may have in or over the land to be subdivided

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or improved, nor does it give the applicant the right to perform work on land owned by others. The acquisition of necessary rights and the presentation of complete and correct information to the Board are responsibilities of the applicant and the failure to do so, including the failure or inability to obtain all necessary permits, licenses, releases or rights, may constitute a reason for the disapproval of a plan or the rescission of approval of an approved plan.

§ 175-10. Format and custody of plan and documents.

- A. Original copies, prints and sheet size. A definitive site development plan or a plan believed not to require approval under the Subdivision Control Law shall be submitted on a transparent original. Reproductions of the original copy of a plan on a black line, or blue line, print are acceptable for other types of plans. Where a transparent original is specified, it shall be in black drawing ink on "wash-off" Mylar, of at least four mil thickness, or tracing cloth (linen) and shall meet the requirements of the Registry of Deeds or the Land Court, as applicable. Sheet size shall be a maximum of 36 inches in the longer dimension and 24 inches in the other dimension. Drawings mounted on foam core or boards of other rigid materials will not be accepted.
- B. Scales; elevations. Maps or plans shall be drawn at common engineering scales such as one inch equals 20 feet, one inch equals 40 feet, one inch equals 100 feet, or one inch equals 200 feet. Detailed engineering construction plans shall be drawn at a scale not greater than one inch equals 40 feet horizontal and one inch equals four feet vertical. All elevations shown on profiles and topographic plans shall be based on the National Vertical Datum of 1929 (abbreviated as NVD '29) and shall identify all benchmarks used and their elevations.
- C. General information on plan. Each sheet of a plan shall have the following general information which shall appear on each sheet:
  - (1) Title block containing the name and section designation, if any, of the proposed development;
  - (2) The name of the applicant, and the property owner if not the same;
  - (3) The name, address and imprint of the professional registration stamp of the landscape architect, engineer, or land surveyor responsible for the preparation of each sheet;
  - (4) A title for each sheet and a number for each sheet, with sheets consecutively numbered;
  - (5) A visual scale and a North arrow, the direction of which shall be the same for all sheets;
  - (6) The date of original preparation and the date of each of any subsequent revisions, with the revisions noted;
  - (7) If applicable, space for endorsement by the Planning Board, with room for the signature of each member, and the date of the endorsement below the signatures;
  - (8) If applicable, reference to a certificate of action or a special permit, a covenant and the date of those actions;

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- (9) If applicable, space for the Town Clerk's certificate of no appeal and the date of that certification below the space for the Clerk's signature; and
  - (10) A legend denoting any signs and symbols used on the plan and not otherwise explained.
- D. Graphic conventions. Lines showing existing conditions shall be shown as screened or dashed lines; proposed conditions shall be clearly differentiated from existing conditions by the use of solid or heavier or bold lines. Contour lines shown on the plan must correspond to known elevations on existing benchmarks and to the existing and proposed grades of streets shown on profile drawings. Benchmarks shown shall be on the Town of Lexington sewer system datum.
- E. Legibility of plans. The information required on the various types of plans specified below shall be presented in a legible form. More than one of the plans listed in § 175-11A (1) through (8) can be placed on one sheet provided the information is clear. The practice of superimposing various types of information onto one, or a few, sheet(s) so that the information is not clear shall be avoided; a series of sheets is recommended. If the information is not legible, the Planning Department may not accept the plan for processing.
- F. Information on computer disk. Certain information, as indicated in the description of the plan or exhibit, is required to be submitted on computer disk. The disk shall be compatible with the version of the computer-aided design system operated by the Town's Engineering Department and in portable document format (pdf).
- G. Custody of plans. Once submitted, the original copy of plans drawn on Mylar or tracing linen will be retained by the Planning Department for the Planning Board and will not be released to the applicant until:
- (1) The applicant submits a written request for an extension of time and the return of the original copy of the plans.
  - (2) The applicant submits a written request and the Planning Board approves a withdrawal of the application.
  - (3) The application is disapproved.
  - (4) The plan is approved, in which case the original copy will be returned to the applicant briefly in order to make copies of the approved plan as signed and endorsed by the Planning Board.
  - (5) An approval not required plan is ready to be recorded. The applicant must sign a receipt for the original, acknowledging that the plan will be recorded within five working days.
- H. No alteration to approved plan. No alteration shall be made to a plan after it has been approved or endorsed by the Planning Board.
- I. Typewritten or printed material. Typewritten or printed material shall be submitted in 8 1/2 inch by 11 inch format. Oversized brochures or reports will not be accepted.

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§ 175-11. Types of plans; information required.

A. Information required on plans. The following information shall be shown on the plans identified below:

(1) Site analysis map.

(a) Site analysis map, to be prepared by a landscape architect, showing:

- [1] Existing contours at two-foot intervals;
- [2] Steep slopes, highlighted as follows:
  - [a] Slopes greater than 15% but less than 25%;
  - [b] Slopes greater than 25% but less than 40%; and
  - [c] Slopes greater than 40%.
- [3] Mature trees, highlighted as follows:
  - [a] Deciduous trees with a diameter at breast height (DBH) equal to or greater than six inches;
  - [b] Conifers with a DBH equal to or greater than six inches;
  - [c] Deciduous trees with a DBH equal to or greater than 12 inches;
  - [d] Any tree with a DBH equal to or greater than 18 inches; and
  - [e] Any tree with a DBH equal to or greater than 32 inches.
- [4] Location and results of any soil, percolation and water table tests using the Department of Environmental Protection Soil Evaluation procedures under Title V.
- [5] Areas within the tract subject to easements, rights-of-way, or similar deed restrictions;
- [6] When applicable, floodways, floodplains and wetlands and associated buffers. The wetlands delineation, prepared by a professional wetlands specialist, should identify wetland boundaries, water resources, buffer zones, and habitats of rare and endangered species (Wetland boundaries do not have to be approved by the Conservation Commission until the submission of a definitive site development plan.);
- [7] Fences, stone walls, trails and rock outcroppings;
- [8] Existing vegetation, including open fields, unique specimens of vegetation and rare and endangered species habitats;
- [9] Areas of visual impact, including views into and out from the site;
- [10] Sources of noise affecting the site and abutting sites; and
- [11] Potentially historically or architecturally significant structures and sites on or adjacent to the site.

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- (b) Information on topography, slopes and trees required by Subsections A(1)(a)[1] through [3] above may be omitted within areas of the site that are not proposed to be disturbed, provided these areas are clearly marked on the plan as areas not to be disturbed.
- (2) Locus-context map.
- (a) Locus-context map of all land within 500 feet of any part of the development tract that is the subject of the application and showing:
- [1] All existing dwellings and principal buildings;
  - [2] The land use of each lot;
  - [3] All lot and right-of-way lines, in a general manner;
  - [4] Existing contours at two-foot intervals;
  - [5] Principal natural features, as described in the site analysis map, Subsection A(1) above, but shown more generally than in the site analysis map;
  - [6] Zoning district boundaries;
  - [7] Recorded easements abutting the tract; and
  - [8] Public facilities or property, such as conservation or recreation land, footpaths, bicycle paths, or streets.
- (b) The Planning Board may require the submittal of cross sections showing elevations on the lot to be developed and those on adjacent properties.
- (3) Property rights and dimensional standards plan.
- (a) Property rights and dimensional standards plan, to be prepared by a registered land surveyor, showing, where applicable:
- [1] \*The location of existing easements or other property rights affecting the development;
  - [2] \*The location of any sections of the land to which the Town would be granted property rights, either by easement or transfer of ownership, for street, utility, conservation, recreation or other public purposes;
  - [3] \*The proposed division of the property into parcels in private ownership, if any, if it affects zoning provisions;
  - [4] The proposed yard setback in feet for buildings and, if applicable, from a zoning district boundary, a brook or a pond and, if applicable, the setback of a driveway or parking lot from lot lines;
  - [5] \*The proposed boundaries of any common open space;
  - [6] The proposed maximum height of buildings;
  - [7] The proposed distance, in feet, between buildings;
  - [8] \*Proposed bounds, markers and/or monuments;

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- [9] \*If applicable, a metes and bounds description;
  - [10] If applicable, zoning district boundary lines and the Town boundary line; and
  - [11] The proposed name of street(s) shall be shown in pencil until approved by the Planning Board.

\*This information is also to be submitted on a computer disk, as required by § 175-10F. All lot lines and lines defining easements, including the length of the line and the bearing of each line, shall be shown.

- (b) The information shown on the property rights plan shall be shown to scale and in its true relative position and with sufficient dimensions and bearings to establish its exact location on the ground and on the plan with respect to at least two existing permanent bounds in existing ways.
- (4) Site construction plan, to be prepared by a landscape architect and a civil engineer, showing in a general manner, where applicable:
  - (a) The location of existing and proposed new buildings;
  - (b) Existing and proposed contours;
  - (c) If applicable, a delineation of vegetated wetlands approved by the Lexington Conservation Commission;
  - (d) The proposed location and dimensions of streets and, if applicable, drives and parking areas, curb cuts, and driveway aprons;
  - (e) The location and characteristics of any proposed common open space;
  - (f) The proposed drainage system in general;
  - (g) Proposed landscaping in general;
  - (h) A proposed limit-of-work line outside of which no land or natural features will be disturbed; and
  - (i) If applicable, the site construction plan shall also provide reasons for excessive fill or excavation and cross sections of excavation or fill areas, with cut and fill calculations.
- (5) Street layout and profile plans, to be prepared by a civil engineer, with each street shown on a separate sheet and consisting of a street layout plan and a street profile plan matching the street layout plan, as follows:
  - (a) Street layout plan that shall show the layout of each proposed street within the development and beyond it to the limit of the proposed construction necessary to provide adequate access and connection to municipal services:
    - [1] The length of each straight segment to the nearest one hundredth of a foot and the bearing thereof to the nearest five seconds;

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- [2] The length, central angle, radius and length of tangent for each curved segment to the same degree of precision as the straight lines and clearly identifying each non-tangent curve;
  - [3] All existing and proposed construction features, such as pavement, walks, curb or berm, drains, catch basins, manholes, sewers, water mains, other underground conduits where known, retaining walls, traffic islands, grass plots, and gutters;
  - [4] Center-line stations designated at one-hundred-foot intervals at or opposite points of tangency;
  - [5] Angles in the street line, manholes, catch basins and culverts; and
  - [6] Sight lines for entering and merging traffic at street intersections and driveway intersections and other necessary data pertaining to traffic safety;
- (b) Street profile plan that shall match the street layout plan and shall be located either above or below it for ease in locating corresponding points:
- [1] The existing side lines and existing and proposed center lines with elevations every 50 feet and at all high and low points;
  - [2] The grade of the principal segments of the proposed street, showing the location of vertical curves and corresponding data;
  - [3] All proposed sewers, drains, catch basins, manholes, cleanouts, siphons and other appurtenances identifying the material, class or strength and size of sewers and drains and the grade for each section thereof in percent; and
  - [4] The centerline stations and invert elevations of all catch basins, manholes, cross drains or culverts.
- (6) Utilities plan, to be prepared by a civil engineer, and showing:
- (a) The location and size of the Town's existing water mains, fire hydrants, sanitary sewers, and storm drains; and
  - (b) The proposed location and size of utilities to be constructed on the site and their proposed connections to the Town's utilities, and any special features, such as culverts or pumping stations, that might affect the ability of the Town to service the development.
- (7) Landscape plan, to be prepared by a landscape architect, showing:
- (a) Existing and proposed grades, the existing vegetative cover to be retained, and including the location, size and type of such vegetation, existing trees with a six-inch DBH or greater, identification of specimen trees, trees to be removed, and trees to be transplanted;
  - (b) Existing and proposed building footprints, walls, fences, parking spaces, loading bays, driveways, walks, storage areas, public rights-of-way, easements and location of structures on, and the uses of, abutting properties;

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- (c) A plan and plant schedule giving botanical and common names of plants to be used, size at time of planting, mature size, rate of growth, quantity of each, location and method of any excavation and soil preparation, and the spacing and location of all proposed trees, shrubs and ground covers;
  - (d) Proposed street furniture, such as regulatory and informational signs, benches, hydrants, streetlighting standards, postal boxes, transformer pads and the like; and
  - (e) The methods for protecting plant materials during and after construction, including a tree maintenance plan, outlining the owners' obligation to maintain and protect trees on the property on an ongoing basis.
- (8) Proof plan, showing:
- (a) The boundaries of the proposed development tract;
  - (b) Existing contours at two-foot intervals;
  - (c) Potential lots within the tract, each complying with the minimum lot frontage, minimum lot area, and minimum lot width (See 4.2.2 of the Zoning Bylaw.) required by the Zoning Bylaw;
  - (d) If applicable, a street layout plan that complies with the design standards for streets and rights-of-way set forth in § 175-45E of Part 2 of this chapter, including grading;
  - (e) Any easements or similar property interests that benefit or restrict the project site; and
  - (f) A table of development data appearing on the proof plan that includes:
    - [1] The total land area of the development tract;
    - [2] The total area of delineated wetlands;
    - [3] The area within the proposed right-of-way; and
    - [4] The area of the impervious surfaces within the proposed right-of-way.
- (9) If applicable, an off-street parking and loading plan showing:
- (a) The number, location, elevation and dimensions of all driveways, maneuvering spaces or aisles, parking spaces and loading bays, which shall comply with this bylaw and accepted engineering practice;
  - (b) The construction details and the location, size and type of materials for surface paving, drainage facilities, curbing or wheel stops, trees, screening and lighting;
  - (c) The location of all buildings, lot lines and zoning boundary lines from which the parking lot or loading area must be set back;
  - (d) Where landscaping is to be provided, the species and size of plant materials;

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- (e) A summary schedule showing the amount of floor space, or other parking or loading factor to be met, the number of standard, compact and handicapped parking spaces and number of loading bays.
- (10) If applicable, a traffic study, and a proposal for mitigating measures to improve capacity or for trip reduction programs, if any. The traffic study shall include:
- (a) An estimate of trip generation for the proposed development showing the projected inbound and outbound vehicular trips for the morning and evening peak periods and a typical one hour not in the peak period. Where there is existing development of the same type of use on the site, actual counts of trip generation shall be submitted.
    - [1] Trip generation rates may be based on the most recent edition of "The Trip Generation Manual" prepared by the Institute of Transportation Engineers that is on file in Lexington Town Engineer's office, and, if applicable, data about similar developments in Massachusetts; or data from professional planning or transportation publications, provided the methodology and relevance of the data is documented.
    - [2] For the purposes of this analysis, the morning and evening "peak period" shall usually be the two hours between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m. respectively. The morning and evening "peak hour" shall be that consecutive sixty-minute segment within the peak period in which the highest traffic count occurs as determined by traffic counts of the peak period divided into fifteen-minute segments. For uses which have an exceptional hourly, daily or seasonal peak period, the SPGA may require that the analysis be conducted for that extraordinary peak period
  - (b) An estimate of the directional distribution of new trips by approach streets and an explanation of the basis of that estimate. Where there is existing development of the same type of use on the site, actual counts of trip directional distribution shall be submitted.
  - (c) An assignment of the new trips to be generated by the proposed development to the segments of the Town street network, which shall include state highways in Lexington, which are likely to be affected by the proposed development. (See Subsection (a)[2])
  - (d) Average daily traffic (ADT) on the streets likely to be affected by the development (See Subsection (a)[2]), counted for a twenty-four-hour period.
  - (e) Intersection turning movement counts of the morning and evening peak periods at the intersections likely to be affected by the proposed development. (See Subsection (a)[2]) In special circumstances where the peak traffic impacts are likely to occur at times other than the usual morning and evening peak periods, the SPGA may require counts for those other peak periods.

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- (f) An inventory of roadway characteristics of the principal approach streets adjacent to the development site and of the streets in the intersections at which turning movement counts are taken showing the width of the right-of-way and of the traveled way, traffic control devices, obstructions to adequate sight distance, the location of driveways or access drives within 500 feet of the entrance to the site for uses that are substantial trip generators, and the presence or absence of sidewalks and their condition.
  - (g) In the case of a development in an abutting city or Town which will have a traffic impact on a street or intersection in Lexington which is one that is likely to be affected by the proposed development for which the traffic study is being prepared, the traffic impact of the development in the abutting city or Town shall be included in the traffic study provided:
  - (h) That traffic impact is equal to or greater than that set forth in the test in (See Subsection (a)[2]);
  - (i) The development has been approved by official action of that abutting city or Town but has not opened for use prior to the date that the traffic counts required by this section were taken; and
  - (j) Data on the traffic impact of that development, comparable to that required by this section, is available.
  - (k) An analysis of the effect on the capacity of those intersections in the Lexington street system likely to be affected by the development(See Subsection (a)[2]) during peak periods of:
  - (l) The additional traffic generated by the development; and
  - (m) Additional traffic from other developments previously approved by the Town of Lexington for which a traffic study was required, or by an abutting city or Town as provided in Subsection (g) above, which have not yet been opened for use prior to the date that the traffic counts required by this section were taken. Analysis of the capacity of intersections shall be based on traffic levels of service as described in the "Highway Capacity Manual, 1985 Edition" published by the Transportation Research Board. This analysis may include an intersection of an access drive serving a development and a segment of the Lexington street system.
  - (n) Where mitigating measures or trip reduction programs are proposed, they shall be proposed by the applicant and shall accompany the traffic study at the time of filing of the application. Where the proposed mitigating measure is the construction of a traffic engineering improvement, evidence, such as letters of support, or commitment, or approval, or the award of a contract, may be submitted to show that construction of the traffic improvement is likely to occur.
  - (o) An estimate of the time and amount of peak accumulation of off-street parking. The counts referred to above shall have been taken

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within the 12 months prior to the filing of the application. Upon request, the traffic engineer shall furnish an explanation of the methodology of the traffic study and additional data, as needed.

(11) A lighting plan, showing:

- (a) The location and type of any outdoor lighting luminaires, including the height of the luminaire;
- (b) The luminaire manufacturer's specification data, including lumen output and photometric data showing cutoff angles;
- (c) The type of lamp such as: metal halide, compact fluorescent, high-pressure sodium;
- (d) A photometric plan showing the intensity of illumination at ground level, expressed in footcandles; and
- (e) That light trespass onto any street or abutting lot will not occur. This may be demonstrated by manufacturer's data, cross-section drawings, or other means.

B. Requirements for other information. The following information shall be included in the studies, analyses, tests or tabulations identified below:

(1) Table of development data showing, if applicable:

- (a) Total land area;
- (b) Area in vegetated wetland;
- (c) Developable site area;
- (d) Length of street and area within street right-of-way;
- (e) Area in common open space;
- (f) Area and percentage of site coverage of buildings;
- (g) Area covered with impervious surface;
- (h) Impervious surface ratio;
- (i) Gross floor area and net floor area of all nonresidential buildings;
- (j) Floor area ratio of all nonresidential buildings;
- (k) Density of dwelling units, or their equivalent; and
- (l) Number of off-street parking spaces and loading bays.

(2) Hydrologic and drainage analysis, to be prepared by a civil engineer, and showing:

- (a) The results of any tests or copies of calculations used in the design;
- (b) Calculations demonstrating the adequacy of the proposed sewer and drainage systems and their compatibility with existing drainage systems; and
- (c) Estimates of flood elevations reached during a one-hundred-year storm, ground- and surface water elevations.

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- (3) Soil surveys, test pits and test borings, to be prepared by a civil engineer, to determine the suitability of the soil for the proposed streets, drainage and utilities, to be taken at one-hundred-foot intervals at the proposed station points as described in the street layout and profile {see Subsection **A(5)(a)[4]** above} or at such other points as the Town Engineer may request.
  - (4) Additional information. If the Planning Board believes it is necessary to evaluate the feasibility of the proposed design of the development, or to determine compliance with the requirements or intent of these Regulations, the Board may require specialized engineering or environmental analyses to be prepared. In its decision on a sketch plan or on a preliminary site development plan, the Planning Board may indicate that additional information is necessary for the next stage in the review process, i.e. the preliminary site development plan or the definitive site development plan. If the applicant submits a definitive site development plan without previously submitting a preliminary site development plan, the Planning Board shall indicate what additional information will be required within the twenty-one-day review period described in § **175-12C(3)**.

C. Documents and exhibits. In addition to plans, studies, analyses, and tests, the various types of applications cited in these Development Regulations require or permit that the following documents and exhibits be submitted, if applicable:

- (1) Deed or easement. Drafts of any deed, easement, or restriction to be offered to the Town.
- (2) Site development conditions. Proposed conditions limiting the use of parts of the site, maintaining or enhancing existing natural features, making site improvements or landscaping, or accepting or assigning responsibility for maintenance.
- (3) Building design. Proposed conditions, which may include a visual representation, such as sketches or photographs, limiting the size, scale, type, style, siting and exterior appearance of buildings.
- (4) Off-site traffic improvements. Proposals for mitigating measures or the design or construction of off-site improvements (or financial contributions therefore) to deal with the traffic impacts of the proposed development.
- (5) Off-site Town facilities and services. Proposals for mitigating measures or the design or construction of off-site improvements (or financial contributions therefore) to deal with the impacts, other than traffic impacts, of the proposed development on Town facilities or services.
- (6) Use of buildings. Proposed special conditions limiting the types of establishments which may use buildings or land and their hours of operation.
- (7) Housing. Proposed special conditions limiting the type, size or location of dwelling units, or the income range of occupants, or dealing with the level of, or term of continued, affordability of dwelling units.

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- (8) Historic or architectural preservation. Proposed special conditions dealing with the maintenance or restoration of buildings or places of historic or architectural significance.
  - (9) Any other material necessary for the SPGA to make the findings required by §135-9.4.2.
- D. Sketch plan. Submission of a sketch plan is recommended for site sensitive, balanced housing, and public benefit developments.
- (1) Purpose. The objectives of the sketch plan are to:
    - (a) Initiate discussion on the development of a tract;
    - (b) Develop an understanding of the physical characteristics of the site and adjoining area;
    - (c) Develop an understanding of how applicable regulations affect the development potential of the site; and
    - (d) Provide direction to the applicant on the Planning Board's view of desirable type(s) and location(s) of development on the tract, namely the site's opportunities and constraints.
  - (2) Sketch plan process. The sketch plan is developed in two parts:
    - (a) Part 1: Applicant submits a sketch plan [See Subsection **D(5)**, Information required, below.] and schedules a site visit with the Planning Board.
    - (b) Part 2: At a public meeting the applicant and Board discuss the site's opportunities and constraints, e.g., slopes and trees, and where development should be sited.
  - (3) Prepared by landscape architect. A landscape architect shall prepare the sketch plan. Engineers, land surveyors, and other types of consultants may assist, but the landscape architect shall have overall responsibility for the design of the development proposal.
  - (4) Source of information. Information taken from, or shown on, a marked-up copy of the Town's data or property maps is generally acceptable for the sketch plan except where indicated in Subsection **D(5)**.
  - (5) Information required. A sketch plan shall include the following:
    - (a) Site analysis map. [See Subsection **A(1)**.]
    - (b) Locus-context map. [See Subsection **A(2)**.]
    - (c) Table of development data [See Subsection **B(1)**.] showing the total land area, the approximate area in vegetated wetland and the approximate area in the slope subtypes. The table of development data may be included on either the locus or site analysis map(s).
    - (d) A proof plan. [See Subsection **A(8)**.]
  - (6) Sketch plan not a commitment to later approval. Any review, comments or recommendations made by the Planning Board or the Planning Department staff are limited to the information presented in the sketch plan and are

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not to be considered as a commitment to approve a definitive subdivision or site development plan for which more detailed information is required.

E. Preliminary site development plan.

- (1) Purpose. The objectives of a preliminary site development plan are:
  - (a) For the developer to demonstrate an understanding of the characteristics of the tract and adjoining land and to present a proposal consistent with those characteristics;
  - (b) To make a general determination of the feasibility of the development;
  - (c) To make a preliminary evaluation of the off-site impacts of the development and the ability of public services to accommodate it; and
  - (d) For the Planning Board to provide specific direction as to what it will find acceptable at the definitive plan stage.
- (2) Prepared by landscape architect. The preliminary site development plan shall be prepared by a landscape architect. Engineers, land surveyors and other types of consultants may assist but the landscape architect shall have overall responsibility for the design of the development proposal.
- (3) Information required. Information presented in the preliminary site development plan shall be based on field surveys except as noted below. A preliminary site development plan shall include at least the following:
  - (a) A site analysis map [See Subsection A(1).];
  - (b) A locus-context map [See Subsection A(2).] which may be based on existing map resources;
  - (c) Required: a property rights and dimensional standards plan [See Subsection A(3).], which may be based on map resources at the Registry of Deeds or Land Court rather than a field survey; not required: the location of bounds, markers and monuments, metes and bounds description, and submittal of information on a computer disk;
  - (d) Required: a site construction plan [See Subsection A(4).]; not required: a limit-of-work line;
  - (e) Required: a street layout plan and a street profile plan [See Subsection A(5).] in general but sufficient to show compliance with the applicable design standards of the Development Regulations and the Subdivision Regulations; engineering details must be shown if waivers from the Development Regulations or the Subdivision Regulations are being requested and the proposed construction does not comply with the standards set forth in Article VIII, Required Improvements; Design Standards, of Part 2 of this chapter, or the Standard Specifications;
  - (f) Required: a utilities plan [See Subsection A(6).] in general but sufficient to show compliance with the applicable design standards of the Development Regulations and the Subdivision Regulations; engineering details must be shown if waivers from the Development Regulations or the Subdivision Regulations are being requested and the proposed construction does not comply with the standards set

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forth in Article VIII, Required Improvements; Design Standards, of Part 2 of this chapter, or the Standard Specifications;

- (g) Required: a landscape plan [See Subsection A(7).]; not required: plant schedule, or proposed street furniture plan;
- (h) A table of development data [See Subsection B(1).], except that data on the following may be approximate unless an accurate determination is necessary to resolve a question of compliance with a requirement: the amount of common open space, the floor area ratio, the number and density of dwelling units, site coverage of buildings, area covered with impervious surface, impervious surface ratio, gross or net floor area of buildings, and the number of off-street parking spaces and loading bays;

Note: When the area of wetlands affects the determination of the maximum floor area ratio or the maximum number of dwelling units, an accurate determination of developable site area, rather than an estimate, shall be submitted. A delineation of the vegetated wetlands that shall be based on a field survey and approved by the Lexington Conservation Commission, with the area within the wetlands boundaries certified by a land surveyor or professional engineer, is required. This determination by the Lexington Conservation Commission is survey information only and is not considered to be the prior referral of the proposed plan to another board or committee before submission to the Planning Board.

- (i) If required, cross-sections showing elevations on the lot to be developed and those on adjacent properties; Information taken from the Town's GIS or property maps is acceptable where applicable;
- (j) And, if applicable:
  - [1] Required: a written, specific proposal dealing with any of the conditions as outlined in Subsection C(1) through (8); not required: the draft of the condition in proper legal form;
  - [2] A hydrologic and drainage analysis [See Subsection B(2).] but only if:
    - [a] There are extensive wetlands on the site;
    - [b] The topography may cause accelerated water runoff; or
    - [c] A drainage system is proposed which is an alternative to the Standard Specifications so that the Town Engineer can determine the feasibility of the proposed drainage system;
  - [3] Soil surveys, test pits or test borings [See Subsection B(3).] but only if needed to determine the suitability of the land for the proposed streets, drainage and utilities;
  - [4] If a sketch plan was filed, a written response to the Planning Board's comments and recommendations in its decision; and

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[5] A proof plan [See Subsection **A(8).**] if a special permit residential development is proposed.

- (4) Preliminary site development plan not a commitment to later approval. Any review, comments or recommendations made by the Planning Board or the Planning Department staff are limited to the information presented in the preliminary site development plan and are not to be considered as a commitment to approve subsequently a definitive subdivision or site development plan for which more detailed information is required.

**F. Definitive site development plan.**

- (1) Purpose. The objectives of a definitive site development plan are:
- (a) Presentation of detailed and specific plans, e.g. construction documents, for the development of the site; and
  - (b) Provision of a specific plan on which the Planning Board may act in granting a certificate of action, a special permit with site plan approval or other approval required by the Development Regulations or the Subdivision Regulations.
- (2) Coordination by landscape architect. A landscape architect shall be responsible for the coordination of the physical planning of the proposed development.
- (3) Information required. Information presented in the definitive site development plan shall be based on field surveys except as noted below. A definitive site development plan shall include the following:
- (a) A site analysis map [See Subsection **A(1).**] based on a field survey; existing trees larger than six inches in caliper within the proposed limit-of-work line shall be shown;
  - (b) A locus-context map [See Subsection **A(2).**] which may be based on existing map resources;
  - (c) A property rights and dimensional standards plan [See Subsection **A(3).**]; the plan shall be based on an instrument field survey; existing and proposed bounds, markers and monuments shall be shown; existing easements and property rights only may be based on map resources at the Registry of Deeds or Land Court;
  - (d) A site construction plan [See Subsection **A(4).**];
  - (e) A street layout and profile plan [See Subsection **A(5).**];
  - (f) A utilities analysis [See Subsection **A(6).**];
  - (g) A landscape plan [See Subsection **A(7).**]
  - (h) Elevations of proposed buildings
  - (i) A table of development data [See Subsection **B(1).**];
  - (j) And, if applicable:

[1] A draft, in proper legal form, of any of the conditions as outlined in Subsection **C(1)** through (8);

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- [2] Hydrologic and drainage analysis [See Subsection **B(2).**] if there are extensive wetlands on the site, or the topography may cause accelerated water runoff, or a drainage system is proposed as an alternative to the Standard Specifications, so that the Town Engineer can determine the feasibility of the proposed drainage system;
  - [3] Soil surveys, test pits or test borings [See Subsection **B(3).**] if needed to determine the suitability of the land for the proposed streets, drainage and utilities;
  - [4] Additional information [See Subsection **B(4).**];
  - [5] If a sketch or preliminary plan was filed, a written response to the Planning Board's comments and recommendations in its decision; and
  - [6] A proof plan [See Subsection **A(8).**] if a special permit residential development is proposed.

G. Major and minor revisions to plans.

- (1) Action on major and minor revisions. Minor revisions to a plan may be handled in the regular review of an application. Review of major revisions to a plan will require an extension of the time period for a decision or withdrawal of the current application and submittal of a revised (different) plan. The Planning Board's policy is that a revision will be considered "major" if:
  - (a) There is a substantial change in the impact of the proposed revision on municipal facilities or services;
  - (b) The timing of the proposed revisions, in relation to the public notification procedures set forth in Massachusetts law and in these Regulations, affects the rights of abutters and other interested persons to be informed of a proposed development.
- (2) Determination of major or minor revision. The Planning Board shall determine whether proposed revisions are major or minor. Subsection **G(3)** and **(4)** are intended to provide general guidelines for the distinction between major and minor revisions, but the determination of the Planning Board, based on specific information, is conclusive.
- (3) Examples of major revisions. Examples of major revisions to plans, as shown on the previously submitted plan, include, but are not limited to, the following:
  - (a) A substantial change in the alignment or profile of a proposed street;
  - (b) Addition of a proposed new street or deletion of a street proposed on the previously submitted plan;
  - (c) A substantial change in the grading of the tract;
  - (d) A substantial change in the location, capacity or operating characteristics of a utility system, such as for water service, sanitary sewer or storm drainage;

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- (e) A substantial increase in the amount of impervious surface that would affect the maximum impervious surface ratio allowed;
  - (f) A change in the number, or a substantial change in the location or configuration, of proposed lots;
  - (g) A change in the type of buildings or dwellings or a substantial change in the location or size of buildings or dwellings proposed;
  - (h) An increase of 10% or more in the number of dwelling units proposed provided the total amount of gross floor area and the number of dwellings are not increased;
  - (i) An increase of 10% or more in the gross floor area of nonresidential buildings proposed provided the number of buildings is not increased;
  - (j) A substantial change, including location, to an offer made in a previously submitted plan to provide public facilities or property, such as conservation or recreation land, walks or paths, including an offer to provide such land or facilities not included in the previously submitted plan; and
  - (k) A substantial change in any special condition, as listed in Subsection C, including offers of a special condition not previously made.
- (4) Examples of minor revisions. Examples of minor revisions to plans, as shown on the previously submitted plan, include, but are not limited to, the following:
- (a) A change in the construction details of a street, including dimensions, which does not affect the alignment or profile;
  - (b) A change in the construction details of a utility system, such as for water service, sanitary sewer or storm drainage, which does not affect its location, capacity or operating characteristics;
  - (c) A change in the location of the limit-of-work line; a change in the boundaries of lots which does not affect the location or number of lots;
  - (d) A change in the landscape plan other than in proposed contours; and
  - (e) A refinement of any special condition, as listed in Subsection C, previously made.

## § 175-12. Filing and acceptance of application.

### A. General provisions.

- (1) Any person who wishes to develop land subject to these Regulations may submit a sketch plan, a preliminary subdivision plan, a preliminary site development plan, a preliminary site development and use plan for a rezoning proposal, or a preliminary street construction development plan [See § 175-68C(2) in Part 3, Article XII.] and shall submit a definitive subdivision plan, an approval not required plan, a definitive site development plan, or a definitive street construction development plan

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[See § 175-68C(3) in Part 3, Article XII.] for action by the Planning Board according to the requirements of this section.

- (2) Planning Director may waive inclusion of some information. If an applicant submits a written request prior to the submission of the plan, the Planning Director is authorized to waive the inclusion of some of the information required for the plan, as listed in § 175-11, if he/she determines it is not necessary, or to permit the use of a different format or scale or other accepted graphic convention, provided the plan includes the information necessary for the Planning Board to make a determination.
- (3) Pre-application conference. The Planning Department staff may hold a pre-application conference with the applicant. The principal purpose of the pre-application conference is for the staff to provide an interpretation of the Zoning Bylaw, the Subdivision Regulations and the provisions of these Regulations and an explanation of the Planning Board's procedures. Review of proposed plans occurs after a sketch plan or preliminary plan is filed.
- (4) Contact with Town departments through Planning Department. All requests for information about site construction for developments subject to these Regulations which might involve other Town departments shall be made through the Planning Department. Upon request, the Planning Department will arrange contacts with other Town departments on matters dealing with developments subject to these Regulations.

**B. Delivery of the application and plan.**

- (1) Filing by delivery or by mail.
  - (a) The application, the plan, other documents, if applicable, and the fee shall be submitted:
    - [1] By delivery, during regular working hours, to the Planning Department; or
    - [2] By registered mail to the Lexington Planning Board.
  - (b) An application for approval of a preliminary subdivision plan or a definitive subdivision plan shall also be submitted to the Board of Health:
    - [1] By delivery, during regular working hours, to the Health Director in the Office of Community Development; or
    - [2] By registered mail to the Lexington Board of Health.
- (2) Notice to Town Clerk. In addition, where required by Massachusetts law, the applicant shall give written notice of such submission to the Town Clerk by delivery or by registered mail, postage prepaid. The notice to the Town Clerk shall consist of a copy of a properly executed application and a copy of the plan on a diazo print(s) or a photocopy. It is not necessary to submit the other documents or supporting evidence, if required, to the Town Clerk. If the plan or the notice is mailed, the date the plan is received by the Town Clerk shall be the date of submission of the plan.

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- (3) Applicant responsible to deliver or mail. The applicant shall be responsible to deliver, or mail, the application and the plan to the Planning Board, the Town Clerk and, if applicable, the Board of Health. Neither the Planning Board, the Town Clerk, the Planning Department nor the Board of Health is responsible for providing the other with a copy of the application or the plan.

(4) Number of copies.

(a) Form A applications:

- [1] One original Mylar copy, with signature block;
- [2] One large (24 inches by 36 inches) format blackline copy;
- [3] One small (11 inches by 17 inches) format blackline copy; and
- [4] One computer disk containing all documents and plans in portable document format (pdf).

(b) Form B applications:

- [1] One original, copy-ready application packet (including any drainage and/or stormwater management plans);
- [2] Nine bound copies of the application packet (exclude any drainage and/or stormwater management plans);
- [3] Three copies of the drainage and/or stormwater management plans;
- [4] Three large (24 inches by 36 inches) format sets of plans;
- [5] Five large format site construction sheets;
- [6] Nine small (11 inches by 17 inches) format sets of plans; and
- [7] One computer disk containing all documents and plans in portable document format (pdf).

C. Acceptance of application.

- (1) Plan complete on the day of submission. At the time of the filing of an application for approval of a plan described in these Regulations, it shall be complete on the day of submission. Any deficiencies or inaccuracies in the application shall be grounds for disapproval of the plan.
- (2) Conditional acceptance. An application shall be considered to be conditionally accepted, pending review of its contents and other documents, upon its receipt by the Planning Department and the Town Clerk.
- (3) Review for completeness. The Planning Director is authorized to determine whether the application is complete and the procedures set forth in these Regulations have been met. The time period for review of an application for completeness shall be not more than seven days for an approval not required plan, 14 days for a sketch or preliminary plan, and 21 days for a definitive plan, from the original receipt of the application. The Planning Director's determination is limited to procedural matters and

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means only that all required elements, i.e. the required plan, the application form, the fee, and the other documents, as applicable, have been submitted and the procedures set forth in these Regulations have been met. This determination of completeness is not a substantive review that the proposed plan complies with the requirements of the Subdivision Regulations, the Development Regulations or the Zoning Bylaw or meets the Planning Board's approval criteria.

- (4) Notice that application is incomplete. If the Planning Director determines an application is incomplete, as provided in Subsection **C(3)**, he/she shall notify the Town Clerk, the Planning Board and the applicant, in writing, within seven, 14 or 21 days of the submission date, as applicable, that the application has been determined to be incomplete, setting forth the reasons for that determination, and, as provided in Subsection **C(1)**, any deficiencies or inaccuracies in the application shall be grounds for disapproval of the plan.
  - (a) The applicant shall respond within seven days of the date of notification that he/she:
    - [1] Withdraws the application, as provided in § **175-13B(3)**;
    - [2] Requests an extension of time, as provided in § **175-13B(1)** and (2); or
    - [3] Requests that the Planning Board proceed to a decision on the application.
  - (b) If an application that is determined to be incomplete is subsequently resubmitted, it shall be treated as a new application.
- (5) Date application determined to be complete. If the Planning Director determines the application is complete or does not notify the applicant and the Town Clerk that the application is incomplete within seven, 14 or 21 days of the submission date of its receipt, as provided in Subsection **C(4)**, the application shall be determined to be complete as of the date originally received. The time periods set forth in the Zoning Bylaw, the Subdivision Control Law, the Subdivision Regulations, or Development Regulations, during which the Planning Board shall make a decision, will begin from the date the application was originally received.
- (6) Acceptance of revised application. If the Planning Board grants an extension of the time period for action, as provided in § **175-13B**, or the Planning Director determines that an application is incomplete, as provided in Subsection **C(3)**, and a revised application is subsequently submitted, the same requirements for the delivery of the application as are set forth in Subsection **B**, and the same determinations as to completeness as are set forth in this subsection for a new application, shall apply. A new review fee shall be required for a revised application.
- (7) Revised application determined to be a new application. If the Planning Board determines that a revised application contains a major revision, as provided in § **175-11G**, it shall notify the applicant that it will not be accepted as a revised application, that the existing application must be

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withdrawn and a new application must be submitted. The new application will be accepted for processing only upon the withdrawal of the existing application.

D. Fees.

- (1) Objectives. The Planning Board's policy in establishing the following fee schedule is:
  - (a) That the costs incurred by the Town of Lexington in the review, approval and inspection of plans submitted in compliance with these Regulations result primarily from, and should be considered as part of the ordinary cost of, the business of real estate development;
  - (b) To approach a full reimbursement to the Town for the cost of providing the review, approval and inspection of a subdivision or other development proposal and other actions to administer these Regulations; and
  - (c) To create incentives so that applicants will comply fully and accurately with these Regulations so as to reduce the time spent by Town employees on review, inspection, and administration, particularly of material submitted several times.
- (2) Fees required. An applicant submitting a proposed plan, a revision to an approved plan or an application for rescission of a previously approved plan shall pay the fee indicated in the fee schedule [See Subsection **D(7).**] at the time of application. If the fee does not accompany the application, the application will not be accepted for processing. A fee shall be paid for the Town's actions relative to the recording of an approved subdivision plan and for the implementation and construction of an approved plan as set forth in the schedule. [See Subsection **D(7).**]
- (3) Filing and review fees. Where indicated in the fee schedule [See Subsection **D(7).**], a separate fee is required for filing an application and for the review of the application. Payment for each fee shall be by a separate check payable to the Town of Lexington or by cash.
- (4) Costs of advertising and holding public hearing. The applicant shall be responsible for the costs of publishing the legal notice of the public hearing. In the event the Planning Board is required to hold the public hearing in a building other than the Town Office Building and if there are costs associated with meeting in another building, such as custodial services, the applicant shall be responsible for those costs.
- (5) No refund upon withdrawal. There shall be no refund of either the filing fee or the review fee if an application for endorsement or approval of a plan is withdrawn.
- (6) Payment for additional professional services. As provided in § 175-11B(4) of these Regulations, the Planning Board may require the applicant to pay the cost of specialized engineering or environmental services.
- (7) Fee schedule.

Type of Application or Action	Reference See:	Amount in Dollars	When Due
Approval not required (Form A, ANR)	175-38A	100	With application
Sketch plan	175-32C		With
Filing fee		100 + 50/lot	application
Review fee		100 + 50/lot	
RD, CD rezoning: Sketch plan	Art. XIV		With application
Filing fee		None	
Review fee		500	
Preliminary plan Residential	175-32D		With application
Filing fee	175-32E	1,000 + 100/lot	
Review fee		1,000 + 100/lot	
Preliminary plan Nonresidential	175-32D		With application
Filing fee	175-32E	1,000 + 250/lot	
Review fee		1,000 + 250/lot	
Preliminary street construction plan	175-68C(2)	250	With application
RD, CD rezoning: Preliminary site development and use plan	Art. XIV		When plan is filed with Planning Board
Filing fee		1,000	
Review fee		1,000	
Definitive plan Residential	175-32F		With application

Type of Application or Action	Reference See:	Amount in Dollars	When Due
Filing fee	175-62E	1,000 + 350/lot	
Review fee		1,000 + 350/lot	
Definitive plan Nonresidential	175-32F		With application
Filing fee	175-62E	1,500 + 500/lot	
Review fee		1,500 + 500/lot	
Definitive street construction plan	175- 68C(3)	400	With application
Extension of time with minor revision to definitive plan	175-13B	1/3* of amount of original	With resubmittal
*Review fee only			
Resubmittal of plan previously withdrawn	175- 13G(6)	1/4 of original filing of definitive plan	With resubmittal
Resubmittal of disapproved plan	175-35	Same amount as original filing of definitive plan	With resubmittal
Resubmittal of plan to be new application	175- 12C(7)		
Any application for which public hearing is required:			Prior to endorsement of plan
Expense of advertisement	175- 12D(4)	As billed by newspaper	
Costs of meeting room	175- 12D(4)	As billed by agency	

Type of Application or Action	Reference See:	Amount in Dollars	When Due
Recording of approved subdivision plan	175-53C		Prior to recording
Plan, decision, covenant		250	
Each additional easement, deed or special condition to be recorded		50/per document	
Inspection of construction of municipal services and facilities	175- 55A(3)	1% of estimated cost to construct SR 175-55B(2)	Prior to start of construction SR 175-55A(1)
Reinspection of services and facilities incorrectly or improperly installed	175- 44D(6)	100 per site visit	Prior to certification of construction
Amendment to an approved plan	175-58A	Same as definitive plan*	With application
*Calculation of the part of the fee based on lots is limited to the number of lots affected by the proposed amendment			
Rescission of previously approved plan when based on applicant's request	175-59C	Same as definitive plan with no charge for lots	With application
Filing fee only			
Minor site plan review	175-82B	\$100	With application
Major site plan review	175-83B	\$500	With application
Notes to Fee Schedule:			
1. The fee for a preliminary site development plan or a preliminary subdivision plan is the same as the fee for a preliminary plan.			

2. The fee for a definitive site development plan or a definitive subdivision plan is the same as the fee for a definitive plan.
3. The fee indicated for a definitive plan is the initial fee. Any subsequent revision, resubmittal, etc., requires the payment of another fee.
4. One payment of a fee for a sketch plan and for a preliminary plan is creditable to the initial fee for a definitive plan. If more than one fee is paid for a sketch plan or a preliminary plan, only the first of those payments is creditable to the initial fee for a definitive plan.
5. In the case of a special permit residential development, where the development tract is not subdivided into lots, the part of the fee based on the number of lots shall be based on the number of dwellings (buildings) instead.

### § 175-13. Review of applications.

#### A. Time for decision.

- (1) Time periods for various applications. The Planning Board shall act on applications that are determined to be complete, as provided in § 175-12C, within the time periods listed below:

Type of Application	See MGL	Maximum Time
Subdivision plan not requiring approval	c. 41, § 81P	21 days
Sketch plan	N/A	45 days
Preliminary subdivision plan	c. 41, § 81S	45 days
Preliminary street construction plan	N/A	30 days
Definitive subdivision plan when plan is based on a preliminary subdivision plan	c. 41, § 81U	90 days
Definitive subdivision plan in a residential zone which is not based on a preliminary subdivision plan	c. 41, § 81U	135 days
RD, CD rezoning: preliminary site development plan accompanies petition for rezoning	c. 40A, § 5	Max: 65 days*
Definitive street construction plan	N/A	45 days

Type of Application	See MGL	Maximum Time
Resubmittal of major revision to definitive plan		Same as original
Resubmittal of plan determined to be incomplete		definitive plan
Resubmittal of plan determined to be new application		
Resubmittal of disapproved plan		
<p>* Public hearing must be held within 65 days of receipt of petition by the Planning Board from the Board of Selectmen. Planning Board recommendation and report submitted to Town Meeting prior to action on article in the warrant.</p> <p>(2) Calculation of time period. The time periods for action on applications submitted to the Planning Board, as set forth in these Regulations, in the Subdivision Regulations, in the Zoning Bylaw and in MGL c. 40A and c. 41 shall start with the day of receipt of an application which is determined to be complete, as provided in subparagraph § 175-12C(5), and shall end with the day the Planning Board's decision is filed with the Town Clerk.</p> <p>B. Extension of time period; withdrawal of application.</p> <p>(1) Extension of time period. The Planning Board may extend the time during which it must act on a definitive plan to allow for minor revisions to the plan, as described in § 175-11G. The extension of time may be initiated:</p> <p>(a) By a written request of the applicant; or</p> <p>(b) By the mutual agreement of the applicant and the Board made at a meeting of the Planning Board at which the applicant is present. The Planning Board will promptly notify the Town Clerk of its vote granting an extension of the time period.</p> <p>(2) Minimum and maximum length of extension.</p> <p>(a) The time period for action shall be extended:</p> <p>[1] Not less than 45 days from the date the revised plan is resubmitted and considered complete, as provided in § 175-12C(5), and the fee for additional review is received, or more than 90 days for a definitive plan; and</p> <p>[2] Not more than 90 days from the date the Planning Board voted to grant the extension, whichever occurs first.</p> <p>(b) Failure to resubmit the plan within 45 days of the date the Planning Board voted to grant the extension, so that at least 45 days are</p>		

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available for review of the revised plan, is grounds for the disapproval of the application.

- (3) Withdrawal of application. An applicant may withdraw an application upon a written request that is approved by vote of the Planning Board.

C. Concurrent applications. In the event an applicant seeks approval of a subdivision plan and a special permit with site plan review and a special permit as part of one site development proposal, he/she may file a concurrent application for each, provided that the application clearly identifies the separate provisions of the Subdivision Regulations and the Zoning Bylaw for which each application is sought or granted. The Planning Board, acting under the Subdivision Regulations and as the SPGA under the Zoning Bylaw, may issue notices, conduct a concurrent hearing and issue decisions in a concurrent manner provided the decisions clearly identify the separate provisions of the Subdivision Regulations and the Zoning Bylaw for which each application is sought or granted.

D. Conferences and site visits.

- (1) Site visit. The Planning Department or the Planning Board may request a site visit with the applicant or his/her representatives. It may request that stakes be placed in the ground delineating the location of a street, buildings and other features to permit a better understanding of the proposed development.
- (2) Planning Board mid-term review. After comments and suggestions have been received from Town boards, commissions or departments (See Subsection E below.), and prior to giving notice of the public hearing or information meeting, the Planning Board may have a conference with the applicant in the middle of the review process. At this review, if the proposed plan contains one or more of the following, the Planning Board may suggest the following choices to the applicant: withdraw the application, request an extension of time to submit a revised plan, or proceed to a decision, with the likelihood the application will be disapproved:
  - (a) Does not comply with the Subdivision Regulations or the Zoning Bylaw and cannot be approved;
  - (b) Seeks or requires waivers that the Board does not wish to grant;
  - (c) Requires approval of features, that are the Board's discretion to grant, which the Board does not wish to grant; or
  - (d) (d) Could be improved by inclusion of features that the Board recommends.

E. Review by Town departments, other boards and committees.

- (1) Notification of Town departments and boards. Upon the determination that an application for a preliminary plan or a definitive plan is complete, or is considered to be complete because of the expiration of either 14 days for a preliminary plan or 21 days for a definitive plan without notification to the applicant, as provided in § 175-12C, the Planning Department shall

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promptly notify the Conservation Commission, the Engineering Division, the Fire Department, the Design Advisory Committee and the Board of Health of the receipt of the application and such other boards, commissions or departments as it may believe appropriate considering the characteristics of the development proposal. The Planning Board will usually not notify Town departments and boards for a sketch plan, but the Planning Department may notify such boards, commissions or departments as it may believe appropriate considering the characteristics of the development proposal. This review is not considered to be the prior referral of the proposed plan to another board or committee before submission to the Planning Board because no action, other than an advisory recommendation, is required of another board or committee.

- (2) Response by Town departments and boards. The Town boards, commissions or departments are requested to submit their comments and recommendations within 35 days of the transmittal of the notification of receipt of the application, as provided in Subsection E(1). As provided in MGL c. 41, § 81U, the Board of Health is required to submit its recommendation within 45 days of submission of a definitive subdivision plan.
- (3) Action by Planning Board deferred until response. The Planning Board shall not make a decision on an application for a preliminary or definitive plan until boards, commissions and departments have submitted comments and recommendations or, if comments are not received, until 35 days have elapsed since the date of the notification. The Planning Board shall not make a decision on an application for a definitive subdivision plan until the Board of Health files a report of its approval or disapproval with the Planning Board or until 45 days have elapsed since the date of the Board of Health's receipt of the application.

F. Notice of public hearing; public review.

- (1) Notice of public hearing. When a public hearing is required, as set forth in applicable statutes, the Planning Board shall give notice of the public hearing by advertisement in a newspaper of general circulation in Lexington once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing. The notice of a zoning hearing shall also be posted in a conspicuous place in the Town Office Building. The notice shall also be sent by regular mail:
  - (a) For an application for approval of a definitive subdivision plan, to the applicant and to each owner of land abutting the land included in such plan as appearing on the most recent Real Estate Tax Commitment List prepared by the Board of Assessors.
  - (b) For an application for approval of a special permit, to all persons who receive notification for approval of a definitive subdivision plan and, in addition, the owners of land directly opposite on any public or private street and owners of land within 300 feet of any point on the property lines of the tract which is the subject of the application, as the owners appear on the most recent Real Estate Tax Commitment List prepared

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by the Board of Assessors, and to the planning board of each city and Town which abuts Lexington.

- (c) For a petition for an amendment to the text of the Zoning Bylaw, to the planning board of each city and Town which abuts Lexington, to the Metropolitan Area Planning Council and to the Executive Office of Communities and Development. For a petition for an amendment to the Zoning Map, notice shall be sent in addition to all persons identified in Subsection **F(1)(b)** above who receive notice of an application for approval of a special permit.

(2) Contents of notice.

- (a) The legal notice of a public hearing on an application for approval of a subdivision plan or a petition for an amendment to the text of the Zoning Bylaw shall indicate the date, time, place and the subject matter of the public hearing. The legal notice of a public hearing on an application for approval of a special permit or for a petition for an amendment to the Zoning Map shall include all the information contained in the legal notice for approval of a subdivision plan and, in addition, shall include the name of the applicant, the location of the proposed development, including the street number, if any, and a description of the area and the type of zoning action requested.
- (b) In the event that the text of a proposed amendment to the text of the Zoning Bylaw is lengthy, the text of the legal notice may be an outline of the subjects covered in the proposed amendment provided the legal notice indicates where the complete text is available for public inspection. The complete text of the proposed amendment to the text of the Zoning Bylaw shall be available in the Planning Department office and in the office of the Town Clerk during the regular business hours of the Town Office Building.

- (3) Information for abutters and neighbors. Where a notice is required to be sent to the owners of property abutting, or within 300 feet of, land which is the subject of a definitive plan or a petition for an amendment to the Zoning Map, the Planning Department may send an alternate notice in a different form than the legal notice as long as it contains all the information required by Subsection **F(2)** for the legal notice.
- (4) Expense of advertisement. The applicant or petitioner shall be responsible for the expense of advertising the legal notice of the public hearing in the newspaper. Prior to the endorsement of any approved subdivision plan or the certification of any special permit decision for recording, the applicant shall file evidence that he/she has paid the cost of providing the required notice and of conducting the hearing. No plan shall be endorsed or special permit decision certified until such expenses have been paid.
- (5) Plans and text available for inspection by public. A copy of the entire application, or of the complete text of a proposed amendment to the text of the Zoning Bylaw, that is the subject of a public hearing shall be available in the Planning Department office for inspection by interested persons during the Department's regular business hours between the date

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the notice of the hearing appears in the newspaper and the date of the public hearing. Any change in the plans or exhibits that the applicant presents at the public hearing that was not on file in the Planning Department office on the date the notice of the public hearing appeared in the newspaper will not be considered by the Planning Board in its decision.

G. Information meeting; public hearing.

- (1) Information meeting. The Planning Board will conduct a public information meeting on any application for approval of a sketch plan or preliminary plan to which abutters within 300 feet of the subject tract will be invited.
- (2) Public hearing. Where a public hearing is required, as set forth in applicable statutes, the Planning Board shall hold a public hearing prior to making a decision on the application. The public hearing on an application for approval of a special permit shall be held within 65 days of the date an application that is determined to be complete was filed. The public hearing on a petition to amend the Zoning Bylaw shall be held within 65 days of the date the petition has been referred from the Board of Selectmen to the Planning Board.
- (3) Conduct of public hearing. A public hearing, or an information meeting, shall be conducted formally under the direction of the Chairman or Vice Chairman of the Board. Customary parliamentary procedure will usually be followed. Anyone wishing to speak must be recognized by the Chair, and all remarks shall be addressed to the Chair, although the Chair may request others to answer questions. The order of the public hearing or information meeting shall be:
  - (a) Opening by Chairman of the Planning Board to explain the procedures for conduct of the hearing or meeting.
  - (b) Presentation by the applicant or petitioner.
  - (c) Questions by Planning Board members and staff.
  - (d) Statements by other public officials, boards, and committees.
  - (e) Factual questions from the audience.
  - (f) Statements from the audience in favor of or against the application.
  - (g) Summation by the applicant or petitioner.
- (4) Public hearing: applicant's presentation. The applicant shall present his proposal at the public hearing or information meeting principally presenting the submitted site development plan and application packet documents. Material presented at the public hearing, the substance of which has not previously been submitted with the application, cannot be considered by the Planning Board in its decision.
- (5) Additional information from applicant after hearing. The Planning Board will not entertain additional information from the applicant after the public hearing or information meeting unless the Board specifically requests such information. The Planning Board will receive additional information from Town boards and departments and individuals and neighborhood groups

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after the public hearing. Such information shall be made a part of the record and made available to the applicant.

- (6) Leave to withdraw. In its discretion, instead of denying the application, the Board may grant a leave to withdraw without prejudice so that the applicant may submit a revised application which shall not be considered as a repetitive petition. Such revised application shall be treated as a new application and new fees shall be paid.

§ 175-14. Decision.

- A. Written decision. Decisions on an application for approval of a subdivision plan or a special permit shall be written and shall be filed with the Town Clerk if required by applicable statute. The decision on a sketch plan shall be written but will not be filed with the Town Clerk. Copies of all decisions will be mailed to the applicant.
- B. Reference to plans. The decision shall incorporate, by reference, the plans which have been filed with the application, including, if applicable, the date of the most recent revision to individual sheets.
- C. Authority. In its decision to approve an application for a special permit or approve with conditions, the Planning Board shall cite the specific section of the Zoning Bylaw that authorizes such action.

§ 175-15. Copies of endorsed plan.

The applicant shall furnish to the Town, and shall bear the expense of making, copies of a plan that is endorsed or approved with the signatures of the Planning Board members, as follows: a Mylar for the Engineering Division and black line prints for the Board's files. See § 175-12B(4). The copies shall be furnished to the Planning Department prior to the recording of the endorsed or approved plan.

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### Article III. GENERAL SUBDIVISION PROVISIONS

#### § 175-16. Authority; title.

- A. Authority. As authorized by MGL c. 41, §§ 81K through 81GG, known as the "Subdivision Control Law," and under the authority delegated to the Town of Lexington by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts, known as the "Home Rule Amendment," the Lexington Planning Board adopts these Rules and Regulations governing the subdivision of land in Lexington. These Regulations regulate the laying out and construction of streets in subdivisions providing access to the several lots therein and ensure safe and sanitary conditions in subdivisions.
- B. Title. These Regulations shall be known and may be cited as the "Subdivision Part of the Development Regulations" or as the "Subdivision Rules and Regulations" or as the "Subdivision Regulations" or, within this Part 2, as "these Regulations."

#### § 175-17. Purpose and objectives.

##### A. Purpose.

- (1) The powers of the Town of Lexington and of the Planning Board under the Home Rule Amendment of the Massachusetts Constitution are exercised for the purpose of promoting the general welfare and convenience, protecting the health and safety of the residents of Lexington and of adjoining communities which may be impacted by the construction of a subdivision in Lexington by:
- (a) Identifying and securing, for present and future residents, the beneficial impacts of growth and development;
  - (b) Identifying and avoiding the negative impacts of growth and development; and
  - (c) Ensuring that future growth and development are of a type and design and are in a location served by adequate public services and facilities.
- (2) These Regulations are intended to achieve those purposes by:
- (a) Providing adequate access to all of the lots in a subdivision by streets that will be safe and convenient for travel;
  - (b) Lessening congestion in such streets and in the adjacent public streets;
  - (c) Reducing danger to life and limb in the operation of motor vehicles;
  - (d) Securing safety in the case of fire, flood, panic and other emergencies;
  - (e) Ensuring compliance with the frontage and access provisions of the Lexington Zoning Bylaw;
  - (f) Securing adequate provision for water, sewerage, drainage, underground utility service, fire, police, and other services where necessary in a subdivision;

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- (g) Coordinating the streets in a subdivision with each other and with the public streets in neighboring subdivisions; and
  - (h) Encouraging the use of solar energy and protecting the access to direct sunlight of solar energy systems.

B. Objectives and criteria: site design. The following objectives and criteria shall be used, where applicable, in evaluating all subdivision plans. The proposed subdivision plan shall be designed in a manner that will:

- (1) Be compatible with the existing natural features of the site and the surrounding area and will preserve the existing land form in its natural state, insofar as practicable, by minimizing grading and the erosion or stripping of vegetation that may result therefrom, particularly from development on steep slopes, and by maintaining man-made features that enhance the land form, such as stone walls, with minimal alteration or disruption;
- (2) Provide adequate facilities for the occupants of the subdivision and will provide for the functional design of facilities, structures and site construction, in accordance with recognized design standards and criteria accepted by the Town of Lexington;
- (3) Promote a high standard in the design of sites being developed, will enhance the natural character and appearance of Lexington, and will minimize awareness of the existence of a subdivision, particularly a commercial subdivision, by screening views of the subdivision from nearby streets, single-family neighborhoods or Town property by the effective use of existing land forms, or alterations thereto, such as berms, and by existing vegetation or supplemental planting;
- (4) Locate intersections of subdivision streets with the Town's arterial or collector streets so as to minimize the risk of accidents and traffic congestion;
- (5) Permit adequate access to buildings, and the grounds adjoining them, for operations by fire, police, medical and other emergency personnel and equipment;
- (6) Permit easy and barrier-free access for persons with physical handicaps or other special needs to the public facilities, such as sidewalks, within the subdivision;
- (7) Provide a system of routes for pedestrians, including bicycles, with minimal conflicts with vehicles;
- (8) Locate and design open space on the site, particularly such common open space as may be required by the Zoning Bylaw or the Development Regulations, so as to increase the visual amenities for the surrounding area as well as for the occupants of the subdivision;
- (9) Provide improved access to, or the development of additional links and connections to, a Town system of public facilities such as conservation areas, recreation facilities, footpaths or bicycle paths, streets or utility systems;

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- (10) Either place electric, telephone, cable television and other such lines and equipment underground or locate them as inconspicuously as possible and will locate and screen support facilities, such as storage, refuse disposal, utility buildings and structures for recreational activities, to form as effective a visual screen of them as is possible;
  - (11) Ensure that new facilities or the erection of new buildings is compatible with buildings or places of historic or architectural significance;
  - (12) Not create adverse impacts on the public services and facilities serving the subdivision, including those that are off the site, such as the sanitary sewer system, the storm drainage system, the public water supply, the street system for vehicular traffic, the sidewalks and footpaths for pedestrian traffic, and, in addition, for residential developments, the recreational facilities; or where there is insufficient capacity in, or adverse impacts on, such services and facilities, improvements will be made to provide sufficient capacity or potential adverse impacts will be mitigated in connection with the approved subdivision;
  - (13) Not present a demonstrable adverse impact on the surrounding area during construction resulting from:
    - (a) Excessive noise, level of illumination, glare, dust, smoke, or vibration which is higher than levels now experienced from uses legally permitted in the surrounding area;
    - (b) Emission or discharge of noxious or hazardous materials or substances; or
    - (c) Pollution of water streets or groundwater;
  - (14) Take all measures necessary to minimize soil erosion and to control sedimentation in the disturbed land area of a proposed development, such as, but not limited to, minimizing the velocities of water runoff, maximizing protection of disturbed areas from stormwater runoff, and retaining sediment within the development site as early as possible following disturbances; or
  - (15) Ensure that no subdivision causes downstream properties, watercourses, channels, or conduits to receive stormwater runoff at a higher peak flow rate, or to receive other unreasonable impacts, than would have resulted from the same storm event occurring over the site of the proposed subdivision in its natural undeveloped condition.

C. Objectives: review procedures. The objectives of the procedures set forth in these Regulations are to:

- (1) Facilitate a detailed review by Town officials and by the public of these proposed subdivisions to determine the adequacy of the facilities proposed to be provided and their impact on public facilities and services and on adjoining land; and
- (2) Establish a sequence of review that progresses from the general to the detailed to avoid unnecessary delay or expense to both the Town and the applicant.

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§ 175-18. Consistency with state law; separability.

- A. Consistency with state law. In the event of conflict between these Regulations and state law, and for matters not covered by these Rules and Regulations, the Subdivision Control Law, MGL c. 41, §§ 81K to 81GG, inclusive, and amendments thereto, shall apply.
- B. Separability. The provisions of these Rules and Regulations are separable. If any provision of these Regulations, or any decision or determination in the administration thereof, is adjudged by a court of competent jurisdiction to be unconstitutional, invalid or void, the court's decision shall not affect any other provision of these Rules and Regulations or the administration thereof.
- C. Invalidation by changes to state law. Any part of these Regulations that may subsequently be invalidated by a new state law, or by amendment of an existing state law, shall automatically conform to the new or amended state law and shall be deemed effective immediately, without recourse to public hearing and the required procedures for amendment and repeal of these Regulations.

§ 175-19. Effective date; repealer; amendments.

- A. Effective date. These Rules and Regulations shall be effective on November 19, 1993.
- B. Repeal of prior regulations. Upon the effective date of these Regulations, the "Development Regulations, Town of Lexington," adopted September 8, 1986, which contained the Rules and Regulations Governing the Subdivision of Land in Lexington, are repealed.
- C. Amendment. These Regulations may be amended from time to time by a vote of the Planning Board after a public hearing in the manner prescribed in the Subdivision Control Law, MGL c. 41, § 81Q.

§ 175-20. Interpretation of forms and charts.

- A. Forms. The Appendix<sup>2</sup> contains sample forms for the administration of these Regulations. These forms are not part of the Regulations. Forms may be added or deleted and the content of the forms may be revised from time to time by administrative action of the Planning Board; such changes are not amendments to these Regulations and may be made without following the procedures for amendment set forth in § 175-19C above.
- B. Comments; charts. These Regulations contain comments, charts and other illustrations, comments and explanations that may be interspersed with the text of the regulations. They are intended to assist the applicant in understanding the Regulations and the Planning Board's policies and procedures but are not part of these Regulations. The notes are set off in a different typeface or in a box or are labeled to show their status as comments, charts and illustrations.

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<sup>2</sup> Editor's Note: The Appendix material is on file at the office of the Planning Department.

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## Article IV. GENERAL SUBDIVISION REGULATIONS

### § 175-21. Unapproved subdivision prohibited.

No person shall make a subdivision, as defined in the Subdivision Control Law, of any land within the Town of Lexington, proceed with the improvement, or sale, of lots in an unapproved subdivision or the construction of a street or the installation of municipal services therein or undertake preliminary steps, such as the clearing of land, excavation, site preparation or other preparatory steps, leading to the construction of a street or the installation of municipal services or facilities, for which requirements or standards are set forth in these Regulations, unless and until a definitive subdivision plan has been submitted to, approved, and endorsed by the Planning Board and recorded in the Registry of Deeds or the Land Court, and only then in accordance with the conditions of approval and the procedures set out in these Regulations.

### § 175-22. Compliance required.

The Planning Board shall not approve a definitive subdivision plan unless it complies with these Regulations and with the applicable frontage and access provisions of the Lexington Zoning Bylaw.

### § 175-23. Plan to be approved if it complies.

As provided in the Subdivision Control Law, MGL c. 41, § 81M, the Planning Board shall approve any duly filed subdivision plan if the plan conforms to the provisions of these Regulations and conforms to the recommendation of the Board of Health.

### § 175-24. Consent of property owner required for all applications.

A requirement that the property owner sign an application form, when the applicant is not the property owner, is set forth in § **175-9D** of Part 1, Article II of this chapter and is incorporated by reference here.

### § 175-25. Rights of others in land shown on plan.

A requirement that the applicant obtain rights, if needed, to perform work on land owned by others is set forth in § **175-9E** of Part 1, Article II of this chapter and is incorporated by reference here.



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## Article V. SUBDIVISION ADMINISTRATION, INTERPRETATION AND ENFORCEMENT

### § 175-26. Administration and enforcement.

- A. Administrative authority. Several provisions dealing with the administration, interpretation and enforcement of the Development Regulations, including the Subdivision Regulations, are set forth in § 175-3 of Part 1, Article I of this chapter and are incorporated by reference here. They are:
  - (1) Official responsible.
  - (2) Relief from personal liability.
  - (3) Administrative procedures.
  - (4) Right of entry.
- B. Violation. No person shall construct, reconstruct, alter, repair, remove, demolish, use or occupy any land, building or facility subject to the provisions of these Subdivision Rules and Regulations, or prepare any part of a site for construction contrary to, in conflict with, or in violation of any provision of these Subdivision Rules and Regulations or of any provision of a certificate issued or a plan approved under these Regulations. After receipt of notice from the official administering these Regulations under Subsection A, each day during which any part of a violation continues shall constitute a separate offense.
- C. Notice of violation. The Planning Director, or any official authorized to act in his/her absence, shall give a written notice of violation to the person responsible for any action which is in violation of any provision of these Subdivision Rules and Regulations. Such notice shall direct the discontinuance of the illegal action or condition and, if applicable, the correction of the violation.
- D. Stop-work order. If work is being undertaken that is in violation of these Regulations, the Planning Director, or any official authorized to act in his/her absence, may issue a written stop-work order that shall be served on the owner or on the person doing the work. The stop-work order shall state the specific reasons why the work is in violation and the conditions under which work may be resumed. Upon notice from the Planning Director that any work is being undertaken contrary to the provisions of these Subdivision Rules and Regulations, all work on the subdivision shall be immediately stopped. Anyone who continues any work after having been served a stop-work order, except such work as may be directed to remove unsafe conditions, shall be liable to prosecution as provided in Subsection E.
- E. Prosecution of violation; fine.
  - (1) If the notice of violation is not complied with within the time period specified in the notice, the Planning Director, or any official authorized to act in his/her absence, may:
    - (a) Issue a notice of violation, as provided in MGL c. 40, § 21D, Noncriminal Disposition of Certain Violations, and in Chapter 1, § 1-6, of the General Bylaws of the Town of Lexington; or

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- (b) Institute the appropriate proceedings at law or in equity in a court of competent jurisdiction to restrain, correct or abate such violation.
  - (2) The fine for violation of provisions of these Subdivision Rules and Regulations shall be not more than \$200 for each violation.
  - F. Violations and building permits. No building permit shall be issued for the construction of any building or structure located on a lot subdivided or sold in violation of the provisions of these Regulations. The Building Commissioner shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is lawfully created within a subdivision, or that a street furnishing access to a lot within a subdivision is shown on a recorded plan and that any conditions contained in the decision approving the subdivision plan, limiting the right to, or timing of, the construction of buildings, have been satisfied.

#### § 175-27. Definitions.

- A. Relation to Subdivision Control Law and Zoning Bylaw. In the interpretation of these Regulations, the definitions in MGL c. 41, § 81L, the Subdivision Control Law, and in Article II, Definitions, of the Lexington Zoning Bylaw, are incorporated by reference here and shall apply as if set forth here in full.
- B. Definitions. In addition to the terms defined in MGL c. 41, § 81L, the Subdivision Control Law, and in Article II, Definitions, of the Lexington Zoning Bylaw, the terms set forth below shall, for the purposes of these Regulations, have the meaning indicated below.
- C. These Regulations are gender neutral. Any reference to the masculine gender shall be interpreted to include the female gender and vice versa.

#### **BOARD**

The Planning Board of the Town of Lexington.

#### **DEVELOPER**

An owner or his agent, or representative, or his assigns.

#### **ENGINEER**

A professional engineer, civil, who is registered to practice in Massachusetts.

#### **LANDSCAPE ARCHITECT**

A landscape architect who is registered to practice in Massachusetts by the Board of Registration of Landscape Architects.

#### **LAND SURVEYOR**

A land surveyor who is registered to practice in Massachusetts.

#### **PLANNING DIRECTOR**

The person appointed under the provisions of the Lexington Selectmen/Town Manager Act to be the Planning Director for the Town of Lexington. Where these Regulations refer to the Planning Director, the Senior Planner is authorized to act in the absence of the Planning Director and shall have the authority and responsibility these Regulations imply. In the absence of both the Planning Director and the

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Senior Planner, the Town Manager may designate an official to act in behalf of the Planning Director.

### **ROADWAY or TRAVELED WAY**

The portion of a street intended for vehicular use.

### **STANDARD SPECIFICATIONS**

The Town of Lexington, Massachusetts, Department of Public Works Standard Specifications, 1993, or latest revision thereof, specifically by reference included in these Regulations and made a part hereof and referred to hereinafter as "Standard Specifications."

### **SUBDIVISION CONTROL LAW**

Sections 81K to 81GG, inclusive, of MGL c. 41 and any acts in amendment thereof, addition thereto or substitution therefore.

### **THESE REGULATIONS**

The Subdivision Rules and Regulations as adopted and amended by the Planning Board.

### **UTILITIES**

Municipal services, including sanitary sewers, stormwater drainage systems, water supply piping, fire alarm conduits, electric and telephone wiring, cable television service, and all appurtenances thereof.

### **WAY**

A street.

### **§ 175-28. Fees.**

Several provisions dealing with the payment of fees for processing applications, recording of plans and inspection of construction are set forth in § **175-12D** of Part 1, Article II of this chapter and are incorporated by reference here. They are:

- A. Objectives.
- B. Fees required.
- C. Filing and review fees.
- D. Costs of advertising and holding public hearing.
- E. No refund upon withdrawal.
- F. Payment for additional professional services.
- G. Fee schedule.

### **§ 175-29. Plans vested against amendments.**

As provided in the Subdivision Control Law, MGL c. 41, § 81Q, if an application for approval of a definitive subdivision plan, or a preliminary subdivision plan followed within seven months by a definitive plan, is filed prior to the effective date of an amendment to the Subdivision Rules and Regulations, the application for approval of a definitive subdivision plan shall be governed by the provisions of the Subdivision Rules and Regulations in effect at the time of the first filing. For the

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application for approval of a definitive subdivision plan to be subject to the prior provisions of the Subdivision Rules and Regulations, each of the following tests shall be met:

- A. The application filed shall be determined to be complete, as provided in § 175-12C of Part 1, Article II of this chapter, as of a date prior to the effective date of the amendment to the Subdivision Regulations;
- B. If a preliminary subdivision plan is filed, followed by a definitive subdivision plan, the application for the approval of the definitive subdivision plan shall be determined to be complete, as provided in § 175-12C of Part 1, Article II of this chapter, as of a date within seven months of the date the preliminary subdivision plan was determined to be complete; and
- C. If a preliminary subdivision plan is filed, followed by a definitive subdivision plan, the application for the approval of the definitive subdivision plan shall be based on, or evolve from, the preliminary subdivision plan. The Planning Board shall apply the test described in § 175-33C of these Subdivision Regulations to determine whether the definitive plan is based on, or evolved from, the preliminary subdivision plan.

#### § 175-30. Waivers.

- A. Waiver of specific rules and regulations. As provided in the Subdivision Control Law, MGL c. 41, § 81R, the Planning Board may waive strict compliance with specific provisions of these Rules and Regulations in any particular case where such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and of these Regulations. An applicant is not entitled to a waiver and the Planning Board, in its discretion, may decline to approve a request for a waiver.
- B. Waiver of a submission requirement. As provided in § 175-12A(2) of Part 1, Article II of this chapter, the Planning Director is authorized to waive the inclusion of some of the information required in the application for approval of a subdivision plan.
- C. Application for a waiver. Any person requesting a waiver must submit the following with the application for approval of the subdivision plan:
  - (1) A written request that identifies the specific provision of these Regulations for which the waiver is requested;
  - (2) A plan showing how the site would be developed if the plan complied with that provision of these Regulations and no waiver is granted; and
  - (3) A narrative statement that explains how granting the waiver would be in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law.
- D. Waiver of minor features only after filing. If a request for a waiver is submitted after the filing of the application, the Planning Board will consider a request for a waiver only of a minor feature [See § 175-11G(4) of Part 1, Article II of this chapter.] of a plan and only if the applicant requests an extension of time for consideration of the application as provided in § 175-13B of Part 1, Article II of this chapter.

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- E. Effect of not requesting or granting a waiver. If a request for a waiver is not submitted and one or more features of a proposed plan do not comply with these Regulations, or the Planning Board does not grant the waiver, the noncompliance may be the basis for disapproval of the application.
- F. Decision on request for a waiver.
- (1) If the Planning Board waives any provision or standard of these Regulations, it shall:
    - (a) Determine that its action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and of these Regulations;
    - (b) Provide specific reasons therefor; and
    - (c) Include its reasons in the decision approving the subdivision plan, which shall be referenced by notation on the approved plan.
  - (2) The Planning Board may make its approval of a waiver subject to such conditions as will achieve the objectives of the provision or standard waived.



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## Article VI. SUBDIVISION APPLICATION REQUIREMENTS; APPROVAL PROCEDURE

### § 175-31. Objectives.

The objectives for the review of applications for approval of a subdivision plan are set forth in § **175-8** of Part 1, Article II of this chapter and are incorporated by reference here.

### § 175-32. Types of plans; information required.

- A. Applicant's responsibility. The applicant's responsibilities for filing an application for any of the plans cited in this article are set forth in § **175-9** of Part 1, Article II of this chapter and are incorporated by reference here.
- B. Format of plan and documents; information required. The format and the information required for any of the plans or other documents cited in this article are set forth in § **175-10** of Part 1, Article II of this chapter and are incorporated by reference here. This article of the Subdivision Regulations may require some modification of the format of subdivision plans or other documents and of the information required, as noted below in the provisions dealing with the various subdivision plans.
- C. Sketch plan. Submission of a sketch plan is not required but is recommended.
- D. Preliminary subdivision plan.
  - (1) Preliminary plan: where required and recommended. Before any person submits a definitive plan for a nonresidential subdivision, he/she shall first submit a preliminary subdivision plan to the Planning Board. Before any person submits a definitive plan for a residential subdivision, the Planning Board recommends, but does not require, submittal of a preliminary subdivision plan.
  - (2) Information required.
    - (a) The information required in a preliminary subdivision plan, as set forth in MGL c. 41, § 81L, the State Subdivision Control Law, is:
      - [1] The subdivision name, boundaries, North point, date, scale, legend and title "Preliminary Plan";
      - [2] The names of the record owner and the applicant and the name of the designer, engineer or surveyor;
      - [3] The names of all abutters as determined from the most recent Real Estate Tax Commitment List prepared by the Board of Assessors;
      - [4] The existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner;
      - [5] The proposed system of drainage, including adjacent existing natural waterways, in a general manner;
      - [6] The approximate boundary lines of proposed lots, with approximate areas and dimensions;

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- [7] The names, approximate location and widths of adjacent streets; and
    - [8] The topography of the land in a general manner.
  - (b) In addition to that information, the applicant shall submit:
    - [1] A written list of all waivers, citing the specific provisions of the Subdivision Rules and Regulations that are needed for the definitive subdivision plan to be approved;
    - [2] A correctly completed Form B (See Appendix.); Editor's Note: The Appendix material is on file at the office of the Planning Department. and
    - [3] The fee required in § 175-12D(7) of Part 1, Article II of this chapter.
  - (3) Comments on preliminary subdivision plan. Any comments or recommendations made by the Planning Board or the Planning Department staff are limited to the information presented in the preliminary subdivision plan and are not a commitment to approve a definitive subdivision plan.

E. Preliminary site development plan.

- (1) Preliminary site development plan recommended. Submission of a preliminary site development plan is not required but is recommended.
- (2) Information required. In addition to the information required by § 175-11E of Part 1, Article II of this chapter, an application for approval of a preliminary site development plan shall also include:
  - (a) A written list of all waivers, citing the specific provisions of the Subdivision Rules and Regulations that are needed for the definitive subdivision plan to be approved;
  - (b) A correctly completed Form B (See Appendix.); Editor's Note: The Appendix material is on file at the office of the Planning Department. and
  - (c) The fee required in § 175-12D(7) of Part 1, Article II of this chapter.

F. Definitive subdivision plan.

- (1) Information required; exceptions and modifications to Development Regulations. The information required in a definitive subdivision plan is the same as that required for an application for a definitive site development plan, as required by § 175-11F of Part 1, Article II of this chapter, with the following exceptions and modifications:
  - (a) The site analysis map [See § 175-11A(1) of Part 1, Article II of this chapter.], except the following are not required: § 175-11A(1)(g), significant noise/visual impact, and (h), historically or architecturally significant structures and sites;
  - (b) The locus-context plan [See § 175-11A(2) of Part 1, Article II of this chapter.] shall show the same information required within the

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boundaries of the subdivision for the land and physical features on the perimeter, and within 25 feet, of the boundaries of the subdivision, except the following are not required: § 175-11A(2)(a)[1], all existing dwellings and principal buildings, and [2], the land use of each lot;

- (c) The property rights and dimensional standards plan [See § 175-11A(3) of Part 1, Article II of this chapter.] shall include a metes and bounds description of the boundaries of the proposed subdivision, except the following are not required: § 175-11A(3)(a)[6], the maximum height of buildings, and [7], the distance, in feet, between buildings;
  - (d) The site construction plan [See § 175-11A(4) of Part 1, Article II of this chapter.] shall also show proposed locations of streetlights;
  - (e) The table of development data [See § 175-11B(1) of Part 1, Article II of this chapter.] except the following are not required: § 175-11B(1)(f), area and site coverage of buildings, (i), gross floor area and, if applicable, net floor area, of all nonresidential buildings, (j), floor area ratio, if applicable, (k), density of dwelling units, or their equivalent, if applicable, and (l), number of off-street parking spaces and, if applicable, loading bays.
- (2) Additional information required. In addition to the information required for an application for a definitive site development plan, an application for approval of a definitive subdivision plan shall also include at least the following:
- (a) A written list of all waivers, if any are requested, from the Subdivision Rules and Regulations;
  - (b) A Form B (See Appendix.); Editor's Note: The Appendix material is on file at the office of the Planning Department.
  - (c) If applicable, copies of agreements granting the developer rights essential to development of the land and construction work involved, including the right of access over existing ways (See § 175-11C of Part 1, Article II of this chapter.);
  - (d) If applicable, preliminary drafts of any deed, easement, offer or agreement to carry out any proposed special condition (See § 175-11C of Part 1, Article II of this chapter.);
  - (e) Copies of all reports, applications for permits, etc., or permits issued, and all amendments thereto, which are relevant to the decision which the Planning Board must make, which have been filed by the applicant with all federal, state and local agencies, and all responses from these agencies (See § 175-9B of Part 1, Article II of this chapter.); and
  - (f) The fee required in § 175-12D(7) of Part 1, Article II of this chapter.

§ 175-33. Application and review procedures.

- A. A. Same procedures as Part 1, Article II of this chapter. The procedures for the review of applications for approval of a subdivision plan are set forth in Part 1,

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Article II of this chapter and are incorporated by reference here, with the exceptions and modifications noted below. See the following sections of Part 1, Article II of this chapter:

- (1) Section **175-11G**, Major and minor revisions to plans.
- (2) Section **175-12**, Filing and acceptance of application.
- (3) Section **175-13**, Review of applications.
- (4) Section **175-14**, Decision.

B. Action by other Town department or board.

- (1) If a proposed plan requires some formal action(s) that affects whether the Planning Board should approve the application, such as the granting of a permit from a Town department or board, or a variance or a special permit under the Zoning Bylaw, or action under another Town bylaw, the applicant shall either:
  - (a) Secure approval of such action prior to the Planning Board having to take final action on the application within the time periods provided in **§ 175-34B(4)**; or
  - (b) File an application for such action, concurrently with the filing of the application with the Planning Board.
- (2) Failure to obtain approval of that action may be the basis for disapproval of the application or may be a condition for approval of the plan by the Planning Board pending approval of other actions.

C. Plan evolved from preliminary plan: content and time period. As provided in the State Subdivision Control Law, MGL c. 41, § 81U, if an application for approval of a definitive subdivision plan is filed after action by the Planning Board on a preliminary plan, the Planning Board must act on the definitive plan within 90 days of its submission. In order for the ninety-day time period to apply, the definitive subdivision plan shall be based on, or evolve from, the preliminary subdivision plan on which the Planning Board has acted. The following tests shall apply:

- (1) If the Planning Board determines that the relationship between the definitive subdivision plan and the preliminary subdivision plan is the same as a "minor" revision, as described in **§ 175-11G(4)** of Part 1, Article II of this chapter, the definitive plan shall be considered to have "evolved" from or be "based on" the preliminary plan.
- (2) If the Planning Board determines that the relationship between the definitive subdivision plan and the preliminary subdivision plan is the same as a "major" revision, as described in **§ 175-11G(3)** of Part 1, Article II of this chapter, the definitive plan shall not be considered to have "evolved" from or be "based on" the preliminary plan. The definitive subdivision plan shall be considered to be a new application for approval of a definitive subdivision plan for which there is a time period of 135 days for action.

D. Zoning "freeze" plan evolved from preliminary plan: content and time period. As provided in the Zoning Act, MGL c. 40A, § 6, if an application for approval of a

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definitive subdivision plan, or a preliminary subdivision plan followed within seven months by a definitive plan, is filed prior to the date of a vote approving an amendment to the Zoning Bylaw, the land within the subdivision is governed by the zoning provisions in effect at the time of the first filing. For the land to be subject to the prior zoning provisions:

- (1) The application filed shall be determined to be complete, as provided in § 175-12C of Part 1, Article II of this chapter, as of a date prior to the vote approving the zoning amendment;
- (2) If a preliminary subdivision plan is filed, followed by a definitive subdivision plan, the application for the approval of the definitive subdivision plan shall be determined to be complete, as provided in § 175-12C of Part 1, Article II of this chapter, as of a date within seven months of the date the preliminary subdivision plan was determined to be complete; and
- (3) If a preliminary subdivision plan is filed, followed by a definitive subdivision plan, the application for the approval of the definitive subdivision plan shall be based on, or evolve from, the preliminary subdivision plan. The Planning Board shall apply the test described in Subsection C to determine whether the definitive plan is based on, or evolved from, the preliminary subdivision plan.

#### § 175-34. Decision.

##### A. Preliminary subdivision plan or site development plan.

- (1) Scope of decision. Within 45 days after the proper submittal to the Planning Board, and to the Board of Health, of a preliminary subdivision plan or a preliminary site development plan which is determined to be complete, as provided in § 175-12C of Part 1, Article II of this chapter, the Planning Board may approve the preliminary subdivision plan, or the preliminary site development plan, with or without modification, or disapprove the plan, stating the reasons for the disapproval. The Planning Board may include recommendations for features that should be included in a definitive subdivision plan.
- (2) Relationship to definitive plan.
  - (a) Disapproval of a preliminary subdivision plan does not prevent the submission of a definitive subdivision plan. If a definitive plan incorporates the Planning Board's recommendations on a disapproved preliminary plan and complies with the Subdivision Regulations, it may be approved by the Planning Board.
  - (b) Approval of a preliminary subdivision plan does not constitute approval of a subdivision or guarantee that the Planning Board will approve a definitive subdivision plan. The Registry of Deeds is not permitted to record a preliminary subdivision plan.
- (3) Approval criteria. The criteria for approval of a definitive subdivision [See Subsection B(2).] will be the basis for a decision on a preliminary subdivision plan to the extent that the information submitted as part of a preliminary subdivision plan or preliminary site development plan allows.

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B. Definitive subdivision plan or site development plan.

- (1) Scope of decision. The Planning Board shall vote to approve, approve subject to conditions, or disapprove the definitive subdivision plan or definitive site development plan and shall file a written decision with the Town Clerk. If the application is disapproved, the Planning Board shall state in detail where the plan does not comply with the Subdivision Regulations or the recommendations of the Board of Health.
- (2) Approval criteria. An application for approval of a definitive subdivision plan will not be approved if it does not meet one or more of the following criteria:
  - (a) The plan shall comply with these Subdivision Regulations and with the applicable provisions of the Development Regulations and of the Zoning Bylaw;
  - (b) The application shall comply with the procedural requirements of these Subdivision Regulations and with the applicable provisions of the Development Regulations; failure to do so shall be the basis for disapproval of an application as much as noncompliance with the design and other standards;
  - (c) The plan shall be designed in a manner that will meet the objectives and criteria for site design set forth in § 175-17B of this Part 2; and
  - (d) The plan shall be approved by the Board of Health, and a favorable recommendation shall be transmitted by the Board of Health to the Planning Board, or 45 days from the date of filing with the Board of Health shall have elapsed without a recommendation being transmitted to the Planning Board.
- (3) Waivers; exceptions. In approving a definitive subdivision plan, the Planning Board, at its discretion, may grant waivers or exceptions from these Subdivision Regulations and with the applicable provisions of the Development Regulations as provided in § 175-30 of this Part 2.
- (4) Time period for decision. The Planning Board's decision shall be made following a public hearing and after the report of the Board of Health has been received or 45 days have expired from the date the application, that is determined to be complete, as provided in § 175-12C of Part 1, Article II of this chapter, has been filed with the Planning Board and with the Board of Health. The Board's decision shall be filed with the Town Clerk within 90 days of the filing for a definitive plan for which a preliminary subdivision plan has been filed, and within 135 days for a definitive plan for which no preliminary subdivision plan has been filed.
- (5) Planning Board failure to act. If the Planning Board fails to act upon an application that has been determined to be complete, or fails to notify the Town Clerk of its action, within the required time period [See Subsection **B(4)**.] or within the time period as may be extended, the plan shall be deemed to be approved.
- (6) Appeal of decision to court. The applicant, any municipal officer or board, or any person aggrieved by the decision of the Planning Board, or by the

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failure of the Planning Board to take final action within the time period prescribed in Subsection **B(4)**, may appeal to the Superior Court of Middlesex County or the Land Court. Such appeal shall be entered within 20 days after the Planning Board's decision is filed with the Town Clerk or within 20 days after the expiration of the time period prescribed in Subsection **B(4)** if the Planning Board has failed to take final action.

§ 175-35. Resubmittal of disapproved plan.

- A. Resubmitted plan. As provided in the State Subdivision Control Law, MGL c. 41, § 81U, if an application for approval of a definitive subdivision plan is disapproved and a revised plan is resubmitted and the plan, as resubmitted, conforms to these Subdivision Regulations and the approval criteria as provided in § **175-34B(2)** above, the Planning Board shall revoke its disapproval and approve the plan. A resubmitted plan shall be subject to the same procedural requirements, including the payment of fees, notification of interested parties, public hearing and the like, as a new application.
- B. Resubmitted plan must comply with all requirements. A resubmitted definitive subdivision plan shall comply with all requirements of the Subdivision Regulations. The fact that the Planning Board may not have cited all reasons for disapproval of the previous application does not limit the scope of the Board's review to those reasons previously cited and does not relieve the applicant from complying with all requirements of the Subdivision Regulations.
- C. Content and time period for resubmitted plan. If the Planning Board determines that the relationship between the resubmitted plan and the definitive subdivision plan is the same as a "minor" revision, as described in § **175-11G(4)** of Part 1, Article II of this chapter, the time period for action on the resubmitted definitive subdivision plan shall be 90 days.
- D. Resubmitted plan considered to be new application. An application shall not be considered to be a resubmitted plan and shall be considered to be a new application, and the time period for action on it shall be 135 days, if:
  - (1) The Planning Board determines that the relationship between the resubmitted plan and the definitive subdivision plan is the same as a "major" revision, as described in § 175-12G(3) of Part 1, Article II of this chapter; or
  - (2) Six months or more have passed since the date the Board's disapproval of the previous application for approval of a definitive subdivision plan was filed with the Town Clerk.

§ 175-36. Status of plan between approval and recording.

- A. Approval is not a subdivision or layout of a street. Approval of a definitive subdivision plan does not constitute:
  - (1) A subdivision of land until the approved plan, endorsed by the Board, is recorded in the Registry of Deeds or the Land Court; or
  - (2) A laying out or acceptance by the Town of a street within the subdivision as a public way until the Town Meeting accepts the street.



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## Article VII. APPROVAL NOT REQUIRED PLAN

### § 175-37. Applicability.

- A. Any person who wishes to record a plan in the Registry of Deeds or in the Land Court and who believes that the plan does not require approval under the Subdivision Control Law may submit the plan to the Planning Board accompanied by documentation, as set forth below, to show that the plan does not require approval. The requirements set forth in this article apply to plans of land in residential and commercial zoning districts.
- B. A plan does not require approval under the Subdivision Control Law if it does not show a subdivision, as defined in MGL c. 41 s. 81L.

### § 175-38. Application and review procedures.

- A. If an applicant believes a plan does not require approval under the Subdivision Control Law, he/she shall submit the plan, a properly executed application on a Form A (See Appendix for sample forms.)<sup>3</sup>, a filing fee as required by § **175-12D(7)**, and the supporting evidence, described in Subsection **E** below, to show that the plan does not require approval to the Planning Board with notice to the Town Clerk.
- B. Same procedures as Part 1, Article II. The procedures for the filing and review of an application for approval of a plan that does not require approval under the Subdivision Control Law are set forth in Part 1, Article II of this chapter and are incorporated by reference here, with the exceptions and modifications noted below. See the following sections of Part 1, Article II:
  - (1) § **175-9**, Responsibilities of applicant.
  - (2) § **175-10**, Format and custody of plans and documents.
  - (3) § **175-11**, Types of plans; information required.
  - (4) § **175-12**, Filing and acceptance of application.
  - (5) § **175-13**, Review of applications.
  - (6) § **175-14**, Decision.
- C. Information required. In addition to the information required by § **175-10C**, the plan shall contain the information listed below:
  - (1) The names of the owners of all abutting lots as they appear on the most recent Real Estate Tax Commitment List prepared by the Board of Assessors;
  - (2) All lots affected by the proposed change in lot line(s);
  - (3) All existing and proposed lot lines, lot frontages, lot areas, and easements which may affect access to the lot. Each lot shall show both the street address and street number, if assigned, as shown on the Assessors' property maps. Proposed lots shall be numbered for identification;

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<sup>3</sup> Editor's Note: The Appendix material is on file at the office of the Planning Department.

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- (4) The name of the street providing frontage and access to the lots; the width of the right-of-way and the width of the street pavement, including any variations in width, along the frontage of the lots which are being subdivided;
  - (5) The status of the street along the frontage of the lots, i.e. whether the street is a public way, a way shown on an approved subdivision plan, or a way in existence on April 4, 1948. If the street changes from one status to another, the line at which the status changes shall be shown by means of dimensions from a reference point that can be readily determined.
  - (6) The information indicated by the \* symbol in § 175-11A(3), as applicable, shall be submitted on a computer disk [See §§ 175-10F and 175-11A(3).];
  - (7) The location, and size, of all existing water, sanitary sewer and storm drainage facilities which serve each lot;
  - (8) The location of all permanent bounds, markers and monuments clearly differentiated as to whether existing or proposed;
  - (9) Sufficient space for the signatures of the five members of the Board;
  - (10) The words "Planning Board approval under Subdivision Control Law not required" shall appear above the space for the signatures; a line for the date of the Board's action and the words "The endorsement above is not a determination by the Planning Board as to compliance with the Zoning Bylaw" shall appear below the space for the signatures.
- D. Information recommended but not required. The Planning Board recommends that the plan contain the information listed below:
- (1) Location of all existing structures:
    - (a) If an existing structure is close to a setback line and there is a question as to its compliance with zoning yard setback requirements, the structure shall be located by transit survey;
    - (b) If an existing structure is not close to a setback line and there is no question as to its compliance with zoning yard setback requirements, the structure may be located by tape measurement or may be shown by its approximate distance from the setback line along with a note referring to another plan which does show the structure;
  - (2) The zoning district in which the lots are located and the location of any zoning district boundaries which are on, or abutting, any of the lots.
- E. Supporting evidence. An applicant shall submit the following to support a determination by the Planning Board that a plan of land does not require approval:
- (1) A written statement:
    - (a) Of the basis upon which the applicant claims that approval under the Subdivision Control Law is not required, and
    - (b) That shows that the criteria set forth in § 175-40 below are satisfied for each lot affected by the subdivision;

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- (2) A small diagrammatic sketch of the original lot boundaries prior to the proposed change in lot lines.

F. Revised application. If a revised application is submitted, it shall be considered to be a new application. A new filing fee shall be required.

§ 175-39. Review and decision process.

- A. Action on application by Planning Board. Within 21 days of receipt of a complete application, and without holding a public hearing, the Planning Board shall either endorse or not endorse the plan. If it does not endorse the plan, it shall notify the applicant, and the Town Clerk, of the reasons for not endorsing the plan.
- B. Action on application by Planning Director. If the Planning Board does not meet within 21 days of receipt of a plan which an applicant believes does not require approval, because no Planning Board meeting is scheduled, or if a scheduled meeting is canceled or postponed due to lack of a quorum or weather conditions, the Planning Director is authorized to act for the Board and shall note the authorization on the plan.
  - (1) He/she shall first:
    - (a) Review the plan with the Chairman or, in his/her absence, the Vice Chairman of the Board; and
    - (b) Determine whether the plan complies with all the requirements set forth in this Article VII.
  - (2) He/she shall then:
    - (a) Either endorse the plan; or
    - (b) Not endorse the plan, in which case he/she shall notify the applicant and the Town Clerk of the reasons for not endorsing the plan.
- C. Endorsement of plans. If the Planning Board votes that the plan does not require approval, the majority of the members shall endorse the plan with their signatures. If the Planning Board is not able to sign the plan at that time, the Planning Board may authorize the Planning Director to sign the plan and such authorization shall be noted on the plan. If the Planning Board endorses a plan not requiring subdivision approval, it may add notes as described in § **175-40** below.
- D. Endorsement is not an approval. Endorsement of the plan is not an approval of any subdivision or a determination by the Planning Board as to conformance with the Zoning Bylaw. It is only an endorsement that the plan does not require approval under the Subdivision Control Law.
- E. Plans that do require approval. If the Planning Board, or the Planning Director as provided in Subsection **B**, determines that the plan does require approval under the Subdivision Control Law or that it will not endorse the plan because it does not meet the criteria for approval set forth in § **175-40**, it shall, within 21 days of receipt of a complete application, give written notice of its determination, stating its reasons, to the Town Clerk and to the applicant. The plan shall be returned to the applicant.

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- F. Failure to act within 21 days. If the Planning Board fails to act upon a plan considered to be complete or fails to notify the Town Clerk of its reasons for not endorsing the plan within the required twenty-one-day time period, the plan shall be deemed not to require approval under the Subdivision Control Law. The applicant may then request, and the Town Clerk shall issue, a certificate that the plan is approved because of the Planning Board's failure to act.
- G. Procedure and time allowed for recording. The applicant shall record the endorsed plan within five working days of receipt from the Planning Department at either the Middlesex County Registry of Deeds or the Land Court and shall furnish the Planning Department with a certified copy of the plan, as recorded.
- (1) If the Planning Department has not received evidence of recording of the plan within 10 working days of the applicant's receipt of the plan, the Department will notify the applicant to either:
- (a) Return the original copy of the plan, as endorsed, to the Planning Department; or
- (b) Furnish evidence of recording of the plan with the book and page reference.
- (2) If the applicant does not do either of the steps specified in Subsection **G(1)(a)** or **(b)** above within five working days of the date of notification by the Planning Department, the Department shall notify the Planning Board at its next regular business meeting. The Planning Board may vote to rescind its vote to endorse the plan and may notify the Registry of Deeds or Land Court accordingly.

§ 175-40. Criteria for endorsement.

- A. The Planning Board shall determine that approval under the Subdivision Control Law is not required and shall endorse the plan only if it meets the criteria set forth in this section and each of the lots shown on the plan has:
- (1) Frontage on a street, as those terms are defined in the Lexington Zoning Bylaw; and
- (2) Sufficient frontage, as required by the Zoning Bylaw, for the zoning district in which it is located.
- B. Parcels to be joined to other lots. The Planning Board will endorse a plan if the parcels created by the proposed changes in lot lines that do not have the minimum lot frontage required by the Zoning Bylaw will be joined to abutting lots and are not intended to be separate lots and the following note appears on the plan: "Parcel \_\_ is to be joined to lot \_\_ and is not to be considered to be a separate lot."
- C. Nonconforming frontage.
- (1) The Planning Board, at its discretion, may endorse a plan if the lot(s) to be subdivided does not have the minimum lot frontage required by §135- 4.2.4 of the Zoning Bylaw but it can be established that the frontage of the lot(s) is nonconforming, as described in Article VI of the Zoning Bylaw, in the following cases:

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- (a) There is no reduction in the frontage of any lot(s) with nonconforming lot frontage; or
  - (b) There is an increase in the frontage of any lot(s) with nonconforming lot frontage so that it complies more closely to the lot frontage requirements of the Zoning Bylaw; or
  - (c) Where a lot with frontage on more than one street has frontage on another street that complies more closely with the requirements of the Zoning Bylaw than the existing frontage of the lot proposed to be changed by the plan.
- (2) To aid in its determination of whether a lot(s) which does not have the minimum lot frontage required by § 135-4.2.4 of the Zoning Bylaw is nonconforming as described in Article VI of the Zoning Bylaw, the Planning Board may require that a legal opinion be furnished by the applicant as supporting evidence as provided in § 175-38E.

D. Noncompliance with Zoning Bylaw.

- (1) Noncompliance with Zoning Bylaw; withdrawal of plan. If the lots to be subdivided do not appear to comply with provisions of the Zoning Bylaw, other than minimum lot frontage, the Planning Board may first notify the applicant and offer him/her an opportunity to withdraw the plan and submit a plan which either complies with the requirements of the Zoning Bylaw or complies as closely as practicable.
- (2) Zoning noncompliance; note on plan. If the lots to be subdivided contain conditions which do not appear to comply with provisions of the Zoning Bylaw, other than the minimum lot frontage required by § 135-4.2.4, the Planning Board will endorse the plan and may add the following note: "This plan has been endorsed for recording purposes only as required by Massachusetts General Laws Chapter 41, Section 81P and contains conditions that may not comply with the Lexington Zoning Bylaw." The Planning Board may also notify the Building Commissioner or designee, with a copy to the applicant, that it believes the lots shown on the plan contain conditions that may not comply with the Lexington Zoning Bylaw, with the recommendation that appropriate enforcement action be taken.

§ 175-41. Frontage on unaccepted street.

- A. In the case of a lot(s) having frontage on an unaccepted street [See Subsection 3 in the Zoning Bylaw definition of "street," § 135-10.], the Planning Board may endorse a subdivision plan as not requiring approval under the Subdivision Control Law if it determines that:
- (1) The street that provides the frontage complies with the standards for the grade and construction of an unaccepted street, set forth in Part 3, Article XII of this chapter; or
  - (2) No change in the use or demand for municipal services will occur as a result of the proposed subdivision. For example, a change in lot lines between two lots each of which is developed would likely result in no change in use.

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- B. Frontage on unaccepted street with inadequate services. The Planning Board may determine that a plan showing a lot(s) with frontage on an unaccepted street does require approval under the Subdivision Control Law and may vote not to endorse the plan if:
- (1) One or more of the lots is vacant and appears to be capable of being used as a building lot for a new dwelling or other principal use permitted by the Zoning Bylaw; and
  - (2) The unaccepted street that provides the frontage for the lot(s) does not comply with the standards for the grade and construction of an unaccepted street, set forth in Part 3, Article XII of this chapter;
    - (a) The unaccepted street is not now of adequate construction to provide for the needs of vehicular traffic and presently provides adequate access; or
    - (b) The lot(s) does not have adequate water supply, sanitary sewer or storm drainage service as specified in Article VIII of these Regulations, in relation to the use of the abutting land.

§ 175-42. Frontage on subdivision street.

The Planning Board may endorse a plan showing revision of lot lines in a previously approved definitive subdivision plan, under the following conditions:

- A. When the construction of the subdivision street has been completed, has been approved by the Town Engineer and the Board, and the surety being held for completion of the subdivision has been released (See § 175-56, Completion of subdivision, in these Regulations.); or
- B. In the case of a technical correction of lot lines which does not create any additional building lots.

§ 175-43. Plan with no change in lot lines.

The Planning Board will not endorse a plan that does not show the creation of new lot lines. A plan confirming existing lot lines or showing new easements will be accepted by the Registry of Deeds or Land Court in accordance with § 81X of the Subdivision Control Law if it bears the certificate of a registered land surveyor that the property lines and lines of streets, as shown on the plan, are as they exist.

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## Article VIII. REQUIRED IMPROVEMENTS; DESIGN STANDARDS

### § 175-44. Required improvements; site design objectives.

- A. Required improvements. No person shall make a subdivision of any land in Lexington unless he/she has submitted a definitive subdivision plan to the Planning Board for its approval showing the lots into which such land is to be subdivided and proposed improvements to provide adequate access to such lots. The definitive subdivision plan shall show the construction of a subdivision street(s) and municipal facilities that meet the design standards and other requirements of this article of the Subdivision Regulations and, by reference, provisions of other Parts of the Development Regulations.
- B. Site design objectives.
- (1) Design objectives. To the extent practicable, development shall be located to preserve and enhance the natural features of the site, to avoid disturbance of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the subdivision and the Town.
  - (2) Residential development. The construction of streets and municipal facilities and of dwellings in a residential development shall consider topography, natural features and drainage and shall promote privacy for residents, sufficient solar access, planting and other natural elements and consistency with the overall aesthetic appearance of the development.
  - (3) Commercial development. The construction of streets and municipal facilities and of buildings in a commercial development shall consider topography, natural features and drainage and shall reduce the impacts of noise, odor, glare and the scale of development on adjoining properties.
  - (4) Design based on site analysis. The proposed subdivision plan shall be based on a site analysis map [See § 175-11A(1) of Part 1, Article II of this chapter.] and shall be prepared by a landscape architect. The applicant shall show how the proposed design relates to the natural features of the site.
  - (5) Unsuitable land. Land that the Planning Board determines to be unsuitable for development due to flooding, improper drainage or adverse drainage, adverse topography, poor soils, bedrock, location of utility easements or other features that the Planning Board determines may be harmful to the safety, health, convenience and general welfare of the present or future inhabitants of the subdivision and/or its surrounding area shall not be subdivided or developed unless adequate measures are formulated by the applicant and approved by the Planning Board to eliminate any short-term or long-term impacts created by development of the unsuitable land.
- C. Lots; property rights.
- (1) Compliance with Zoning Bylaw. All lots shown on the plan shall comply with area, frontage and access requirements of the Lexington Zoning Bylaw. The minimum frontage for the subdivision of land shall be the

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same as the minimum lot frontage in Table 2 of the Zoning Bylaw for the zoning district in which the land is located.

- (2) Relationship of lot to street. Every lot shall have sufficient access to it for automobiles, emergency vehicles, such as fire-fighting apparatus and an ambulance, and larger vehicles such as delivery trucks. Where residential lots front on more than one street that have different classifications [See § 175-45D(2).], the access shall be to the lower classification street provided the street complies with the design standards set forth in these Regulations.
- (3) Lot arrangement. Lots shall be arranged so that there will be no foreseeable difficulties in securing building permits to build on all lots in compliance with the Town of Lexington Zoning Bylaw, because of topography, soils, bedrock, improper drainage or other conditions, or in providing practical, feasible driveway access to a dwelling on each lot.
- (4) Easements.
  - (a) Easements for utilities and bicycle and pedestrian paths shall be provided, where necessary, across lots or along the rear or side lines of lots and shall be at least 20 feet wide. When a subdivision is traversed by a watercourse, drainageway, channel or stream, or contains a stormwater storage facility, the Planning Board may require the provision of an easement of adequate width to conform substantially to the lines of said feature and to provide for the possibility of flooding, protection of banks and adjacent properties, construction or future maintenance and other necessary purposes. Slope easements shall be provided where necessary to ensure lateral support and protection of streets and other construction features.
  - (b) No section of a water system, a sanitary sewerage system, a storm drainage system or of any other utility system shall be approved if it requires a connection to municipal system over land of other owners, unless appropriate easements are first obtained.
- (5) Subdivision straddling municipal boundaries. Whenever access to the subdivision or any lot in it is required across land in another Town or city, the Planning Board may require documentation that access has been legally established in that Town or city as a public street or as part of an approved subdivision. In general, lot lines should be laid out so as not to cross municipal boundaries.
- (6) Self-imposed restrictions. If, as part of a subdivision application, the applicant or owner places voluntary restrictions on any of the land contained in the subdivision that are greater than the requirements of these Regulations or of the Town of Lexington Zoning Bylaw, such restrictions or references thereto shall be indicated on the definitive plan and recorded in the South Middlesex Registry of Deeds.
- (7) Bounds.
  - (a) Permanent reference bounds for surveying shall be set:

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- [1] Along each right-of-way line at all intersections, angle points, points of change in direction or curvature of streets, and at the two corners of each lot that abuts the right-of-way; and
  - [2] Along each line of any easement at angle points, points of change in direction or curvature.
- (b) If a permanent bound is set on a long straight line, each bound shall be set so that it is visible, or not more than 500 feet, from the next bound in each direction, whichever is less.
  - (c) Permanent bounds shall be of granite or reinforced concrete six inches square and three feet long with a one-inch deep one-half-inch diameter drill hole in the top. Permanent bounds shall be set in bank run gravel and shall be set flush with the surface of the ground in accordance with the Standard Specifications. Where the soil makes the setting of permanent bounds impractical, alternate types of permanent monumentation may be used with the prior approval of the Town Engineer.
- (8) Markers. In addition to locations where permanent bounds are required, a permanent reference marker for surveying shall be set along each lot line at angle points, points of change in direction or curvature. Permanent markers shall be metal pipes or pins at least 24 inches in length and shall be imbedded in the ground so that they are not easily removed or shifted from the point they mark.

D. General construction requirements.

- (1) Construction specifications. In the event that the subdivision plan proposes construction for which standards or specifications are not provided by these Subdivision Regulations, the Planning Board's Development Regulations, or the Town's Standard Specifications, the Massachusetts Highway Department Standard Specification for Highways and Bridges, latest edition, shall apply. In the event of a difference between the Town's Standard Specifications and the Massachusetts Highway Department Standard Specification for Highways and Bridges, the Town Engineer shall determine which standard or specification shall apply.
- (2) Reimbursement for extra construction. As provided in § 175-51D(1) of these Regulations, the Planning Board may require an applicant to install municipal services and construct ways of greater width or size than the standard Town requirements for the subdivision alone. Under no circumstances shall a developer be reimbursed for the construction of a street with a pavement less than 33 feet wide, nor shall a reimbursement be made for the construction of ways and services of greater size than specified in the design standards in these Regulations where, in the opinion of the Planning Board, such greater size is needed to serve the subdivision, nor shall a reimbursement be made for extending streets and utilities to the subdivision's boundaries.
- (3) Improvements across entire frontage. The improvements required by these Rules and Regulations shall be provided across the entire frontage of any lot the subdivision of which is approved by the Planning Board.

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- (4) Notification of Town Engineer. No step in the construction of required improvements shall commence until the Town Engineer has been notified at least 48 hours, excluding Saturdays, Sundays and legal holidays, in advance of the beginning steps.
- (5) Inspection by Town Engineer. Each phase or step in the construction of required improvements shall be inspected and approved in writing by the Town Engineer or his representative.
- (a) As a minimum, the developer shall request an inspection at the following stages of development:
- [1] Following installation of all underground drainage and utilities, prior to backfilling;
  - [2] Following preparation of the street subgrade and shoulders;
  - [3] Following spreading and compaction of the gravel base, prior to application of the binder course on the street;
  - [4] Immediately prior to and during the application and compaction of the binder or surface course on the street and, if required, on the sidewalk;
  - [5] Following completion of all improvements and the installation of bounds.
- (b) The developer shall not proceed with construction of any of the above stages of development until the Town Engineer has given his written approval of the satisfactory completion of the previous stage. The Town Engineer may require inspection at such other intervals as he/she may deem necessary to assure proper construction of the improvements. In addition, the Town Engineer may require periodic inspection reports from the developer's engineer.
- (6) Reinspection of incorrect construction. If the Town Engineer does not give written approval of the satisfactory completion of the previous stage, or at any other time, and the Planning Director gives written notice to the developer that any of the facilities are not constructed in accordance with the approved subdivision plan, or do not comply with the construction specifications listed in Subsection **D(1)**, or are not constructed in accordance with good construction practice as determined by the Town Engineer, the developer shall correct the construction of the facility so that it complies. The developer may not proceed to a subsequent stage of construction until the incorrect construction has been corrected and the Town Engineer issues a written statement that the construction complies. A site visit by the Town Engineer may be required for which a fee is required as set forth in § **175-12D(7)** of Part 1, Article II of this chapter.
- (7) Disposal of debris and waste. No debris, junk, rubbish or other non-biodegradable waste materials shall be buried on any land in the subdivision or left, or burned, on any lot or on the street right-of-way. Removal of such materials shall be required prior to the final release of any covenant or surety. Burial of biodegradable materials on the site shall be subject to the approval of the Board of Health and the Town Engineer. For

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the purposes of this subsection, tree limbs and brush and stumps are not considered biodegradable and shall not be buried on the site. The burial location(s) and description of buried materials shall be noted on the as-built plan. The Planning Board may require that the description and location of buried materials be recorded in the Registry of Deeds prior to release of affected lots for sale or building.

§ 175-45. Streets and rights-of-way.

A. Street design objectives.

- (1) General objectives. The subdivision street system shall be designed to:
  - (a) Permit the safe, efficient and orderly movement of motor vehicles, pedestrians and bicycles;
  - (b) Meet, but not exceed, the needs of the present and projected future population to be served;
  - (c) Provide for easy and prompt access by emergency vehicles, such as fire, police and ambulance vehicles, and to permit the more cost-effective delivery of Town services, such as snow removal, school bus, or refuse removal services;
  - (d) Contribute to an efficient Town-wide system of movement of motor vehicles, pedestrians and bicycles;
  - (e) Promote connections for both pedestrians and vehicles between adjacent neighborhoods and more direct access to public facilities, such as schools, recreation areas and open space;
  - (f) Reduce the use of the Town's few arterial streets as an alternative to street connections between adjacent neighborhoods;
  - (g) Where applicable, to promote the use of public transportation as a means of reducing vehicular congestion and environmental pollution;
  - (h) Minimize the long-term costs for maintenance and repair of streets;
  - (i) Enhance the appearance of the subdivision and of Lexington by achieving a visually attractive streetscape.
- (2) Residential subdivisions. In addition, the street system in a residential subdivision shall be designed to:
  - (a) Discourage the use of streets in residential neighborhoods by through traffic which originates or has a destination:
    - [1] Outside of Lexington;
    - [2] In a commercial area;
    - [3] In other, more distant, residential neighborhoods in Lexington such as those that are a mile or more away;
  - (b) Protect the residential character of the development by discouraging high-speed travel within the subdivision and reducing noise and fumes;

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- (c) Promote safe travel by bicycles and pedestrians and, where possible, provide facilities for them separated from automobiles.
  - (3) Commercial subdivisions. In addition, the street system in a commercial subdivision shall be designed to:
    - (a) Encourage car pooling, van services and the use of public transportation and a reduction in the use of single-occupant automobiles;
    - (b) Reduce congestion on nearby streets and maintain an adequate traffic-carrying capacity at adjoining intersections.

**B. B. Layout and alignment of the street system.**

- (1) Connection to public street.
  - (a) Each street within a subdivision shall connect to and be accessible from:
    - [1] An existing public street;
    - [2] A subdivision street approved as part of another definitive subdivision plan but not yet accepted by the Town, which has either been constructed satisfactorily or for which sufficient surety exists to guarantee satisfactory completion of the street; or
    - [3] One or more other streets in the subdivision that do connect to a street described in Subsection **B(1)(a)[1]** or **[2]** above.
  - (b) If the location of the proposed subdivision does not permit connection to a public street or a subdivision street, the applicant shall be responsible for ensuring that the intervening distance between the proposed subdivision street and a nearby public street or a subdivision street {see Subsection **B(1)(a)[2]** above} is built to the same design standards as if a new subdivision street were being constructed in compliance with the Subdivision Rules and Regulations. If need be, the applicant shall be responsible for constructing that intervening distance at his/her expense. The Planning Board shall not approve a subdivision plan which requires construction of a street in the intervening distance if a competent legal opinion is presented that the applicant does not have the necessary rights to make such improvements and until the Town Counsel provides an opinion that there are not potential legal impediments to such construction or they have been removed.
- (2) Streets continuous. Where there is more than one street within a subdivision, streets shall usually be connected into one continuous system except where topographic or other natural features of the site may justify one or more streets being separated from the others.
- (3) Intersections. Streets shall be laid out so as to intersect as nearly as possible at right angles, and in no case at less than a seventy-five-degree angle. New intersections at one side of an existing street shall align

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directly with any existing intersection on the opposite side of the street whenever feasible.

- (4) Distance between intersections. An intersection of two streets shall not be within 125 feet of any other existing or proposed intersection as measured between the point of intersection of the center lines of the intersecting streets. An exception is that a new subdivision street may be constructed at an intersection of two existing streets if the proposed subdivision street is aligned opposite one of the existing streets.
- (5) Grade at intersections. Intersections shall be designed with a nearly level grade [not greater than the percentage set forth in Subsection **E(1)**, Design Standards] for a distance along the center line of the proposed subdivision street of at least 75 feet from its point of intersection with the gutter line of the street with which it intersects.

C. Extension to adjoining land.

- (1) Easement reserved for extension to adjoining land. When the Planning Board determines that there is land adjoining the subdivision that can be developed, the subdivision plan shall allow for the future extension of the street and other public facilities to the adjoining land. The subdivision plan shall reserve an easement to the adjoining land for the future extension of the street and other public facilities.
- (2) Reconstruction of street if development of adjoining land subsequently occurs. If the adjoining land is subsequently developed, the developer of that land shall be responsible for all construction within the easement, and the reconstruction of the street and utilities, if needed, to allow for their extension to the adjoining land. Such construction shall include the removal of any turnaround and the construction of a straight extension of the street in its place. Any land within the right-of-way that was part of the turnaround and is no longer needed for a straightened right-of-way shall be landscaped and deeded to the abutters.
- (3) Utility stubs extended.
  - (a) Where needed, the Planning Board may require the developer to construct stubs of utility lines and other underground services and facilities to the edge of the right-of-way so that future extension of the street and utilities can be made without digging trenches in the street.
  - (b) The Planning Board may require the developer to construct a "wye" stub of utility lines to the edge of the right-of-way of a subdivision street to serve lots that abut the street but are not in the subdivision so that those lots may connect to the Town system at a later date without digging trenches in the street. This requirement shall include any street section across an intervening distance as provided by Subsection **B(1)**. The lots to which a "wye" stub is extended shall be either vacant lots for which a building permit could be issued in compliance with the Zoning Bylaw or a lot on which there is an existing dwelling that is not connected to the Town sewer or water system.

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(4) Reserve strip prohibited.

- (a) A strip of land, not more than 25 feet wide, along the boundary of a subdivision that prohibits access to a street or adjoining property shall not be permitted except where the Planning Board determines it to be in the public interest. If the adjoining property within 25 feet of the right-of-way is vacant and could be developed for a dwelling in compliance with the Zoning Bylaw and other Town bylaws and regulations, access to the right-of-way shall be permitted.
- (b) A restriction or an easement granted to the Town, restricting driveways and curb cuts in a higher classification street and directing access to a lower classification street, shall not be considered a reserve strip within the meaning of this subsection.

D. Street classification.

- (1) Compliance with classification system. Each street in a proposed subdivision shall be designed and constructed in accordance with the following classification system. The Planning Board shall determine the classification of each proposed street. In making its determination, the Planning Board shall consider the potential for future extension of the street to serve adjoining land.
- (2) Classification hierarchy. The hierarchy of the street classification system is based on the volume and characteristics of the traffic which is likely to use the street. The hierarchy is:
  - (a) Minor residential street (dead end): the lowest classification of residential street designed to serve not more than four proposed, potential or existing dwelling units. It carries only the traffic that has its origin or destination on the lots which have access to the street. In nearly every case, the limitation of not more than four proposed, potential or existing dwelling units served means the street will be a dead end. As many dwellings in a subdivision as is possible shall have their access onto this class of street.
  - (b) Local street: the next lowest street designed to serve five or more proposed, potential or existing dwelling units. It carries traffic that has its origin or destination in the immediate neighborhood, such as on the lots that have access to the street and from minor residential streets which connect to it. Dead-end streets with more than five proposed, potential or existing dwelling units are in this class of street. As many dwellings in a subdivision as is possible shall have their access onto this class of street rather than a higher classification street.
  - (c) Collector street: the next lowest street designed to serve 15 or more existing, proposed or potential dwelling units, or a commercial development in a commercial subdivision, and to act as a connection to other streets. It conducts and distributes traffic between lower classification streets and higher classification streets. In larger residential developments, a collector street may be necessary to carry traffic from one neighborhood to another adjoining neighborhood or

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from the neighborhood to other areas in the Town. In a residential development, it is not intended to be a bypass or shortcut to serve through traffic that has its origin or destination outside of Lexington, in a commercial area, or in other, more distant, residential neighborhoods in Lexington such as those that are a mile or more away. On corner lots, access should be to the lower classification street.

- (d) Arterial street: the highest classification street designed primarily to carry through traffic that does not have its origin or destination within a proposed subdivision. It carries traffic to and from commercial districts within Lexington, residential neighborhoods in Lexington that are a mile or more away, and to and from activity centers in adjoining cities and towns. Private access and frontage should be discouraged and limited to higher volume generators of traffic such as large commercial or multifamily residential developments. Arterial streets would rarely be appropriate for a single-family residential development.
  - (3) Street names. Street names shall be sufficiently different in sound and in spelling from other street names in Lexington so as not to cause confusion. A street that is planned as a continuation of an existing street shall have the same name. The extension of a street to connect to another street with a different name shall have the name of the longer street. The Planning Board, after consultation with the Fire Chief and the Police Chief, shall determine the name of the street.
  - (4) Street name signs. Street signs shall be erected on two-inch inside diameter posts at all street intersections in accordance with the Standard Specifications. Temporary street name signs with black letters four inches long on light background shall be erected at the time work is started in that portion of a subdivision at all points where permanent signs will be required. The developer shall maintain complete visibility of street name signs until they are replaced by permanent signs that comply with the Town's specifications, at the developer's expense.
- E. Design standards for streets and rights-of-way.
- (1) Design standards for streets and rights-of-way.

Requirement	Type of Street			
	Minor Residential	Local	Collector	Arterial
Number of dwelling units served	Max. = 4	5 or more	15 or more	
Minimum right-of-way width	40 feet	50 feet	60 feet	70 feet

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Requirement	Type of Street			
	Minor Residential	Local	Collector	Arterial
Travel lanes	2 at 10 feet	2 at 11 feet	2 at 12 feet	4 at 13 feet
Minimum pavement width	20 feet	24 feet	32 feet	50 feet
Maximum grade	8%	8%	6%	6%
Maximum grade within 75 feet of intersection	2%	2%	1%	1%
Minimum grade	1%	1%	1%	1%
Minimum center-line radius	100 feet	150 feet	300 feet	300 feet
Minimum center-line tangent length between reverse curves	50 feet 20 feet	100 feet 25 feet	150 feet 30 feet	200 feet 30 feet
Minimum radius of right-of-way rounding at intersections				
Minimum sight distance for vertical and horizontal curves	100 feet	150 feet	200 feet	300 feet
Minimum sight distance at intersections	Not applicable	150 feet	200 feet	300 feet
Sidewalk	One side*	One side*	Both sides	Both
*Not required where street with which it intersects does not have a sidewalk	5 feet wide	5 feet wide	5 feet wide	sides 5 feet wide
Landscaped planting strip	One side 5 feet wide	Both sides 6 feet wide	Both sides 7 feet wide	Both sides 7 feet wide

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Requirement	Type of Street			
	Minor Residential	Local	Collector	Arterial
Shoulder				
*Opposite side from landscaped planting strip	One side* 5 feet wide	See § 175-45E(9)	See § 175-45E(9)	See § 175-45E(9)
(2) Prohibited features. The following design features are not permitted:				
(a) Reverse curves without a tangent length between them.				
(b) A street with a varying width.				
(c) A street layout in which tangent lines are connected at angle points with less than 135° rather than by a curve.				
(3) Dead-end street.				
(a) A dead-end street is a street to which there is only one means of access from a street that:				
[1] Meets the definition of "street" in the Lexington Zoning Bylaw;				
[2] Appears on the Zoning Map; and				
[3] Is a through street.				
(b) A through street is one that connects in two or more places, more than 125 feet apart, with other streets that meet the definition of "street" in the Lexington Zoning Bylaw and appear on the Zoning Map.				
(c) A dead-end street shall not be longer than 650 feet from the point of intersection of its center line with the center line of the right-of-way of a through street measured along the center line of the right-of-way line of the dead-end street to the furthest point on the right-of-way line. If a subdivision street is proposed to be connected to one or more existing streets that are dead-end street(s), the length of the dead-end street shall be measured along the center line of the rights-of-way of all existing and proposed dead-end streets to the point of intersection with the center line of the right-of-way of a through street.				
(4) Turnaround for dead-end street. Each dead-end street shall have a turnaround. The right-of-way line of a circular turnaround shall have at least a one-hundred-twenty-foot diameter. The outside edge of the paved surface of the street within a circular turnaround shall have at least a forty-seven-foot radius. A landscaped center island shall be provided in a circular turnaround. Alternate layouts, such as a partial circle, a "hammerhead" or a "teardrop" configuration, may be permitted by the Planning Board under special circumstances, if designed for a vehicle at least 30 feet long, eight feet wide and having an outside turning radius no				

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less than 47 feet. A street sign stating "Dead End" or "Not A Through Way," satisfactory to the Town Engineer, shall be installed.

- (5) Center line of street. The center line of the paved section of the street shall follow the center line of the right-of-way. Where exceptional topographic conditions or the presence of large, mature trees warrants, the Planning Board may permit the centerline of the paved section of the street to be offset.
- (6) Sight distance. Sight distance shall be computed according to the most recent edition of the "Policy on Sight Distance for Highways" of the American Association of State Highway and Transportation Officials (AASHTO).
- (7) Street pavement.
  - (a) The paved section of a street shall be constructed of a two-inch binder course and one-and-one-half-inch surface course of bituminous concrete on top of a gravel base at least 12 inches deep extending laterally 18 inches outside the gutter lines. The pavement shall pitch down from the center line toward gutters at a rate of 3/8 inch vertical for each horizontal foot. Corner rounding fillets shall be paved to the same distance from exterior street lines as in straight sections of street.
  - (b) Driveway aprons shall be constructed to serve each lot, carefully graded to provide unimpeded drainage in the gutter, and constructed to the same standards as the street to the actual driveway width but in no case less than eight feet, or greater than 20 feet, wide for the entire distance between the exterior right-of-way line and the paved section of the street.
- (8) Curbs and gutters. Curbing is required to provide for safety, stormwater management, and delineation and protection of the pavement edge and to prevent erosion. As a minimum, a continuous, low-profile, "Cape Cod" style berm, of either bituminous concrete or sloped granite, shall be provided as an integral part of each new street. A berm shall be 12 inches wide sloping down towards the roadway three inches vertical in each horizontal foot. On a cul-de-sac turnaround sloped granite curbing shall be provided.
  - (a) Vertical granite curbing shall be installed:
    - [1] At the back of catch basins that are at low points;
    - [2] On all sections of street with a grade greater than 5%;
    - [3] At all corner roundings; and
    - [4] On all arterial streets.
  - (b) The design, dimensions and installation of all granite or bituminous curbing shall be in accordance with the Standard Specifications and to the satisfaction of the Town Engineer.

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- (9) Shoulders. A shoulder at least five feet wide shall be provided adjoining the edge of the required curbing along the paved section of the street. The maximum slope of the shoulder shall be 3/8 inch of vertical height for each horizontal foot. The shoulder shall not be paved and shall have a grass surface or other plant material acceptable to the Planning Board. If a landscaped planting strip or sidewalk is provided in the area in which the shoulder would otherwise be located, the dimensional and other construction standards for the landscaped planting strip or sidewalk shall apply.

(10) Slopes and walls.

- (a) Wherever the grade of the approved street differs from the grade of the adjacent land or where otherwise necessary for public safety, in the area beyond the sidewalk, if applicable, or the landscaped planting strip, or the shoulder, the developer shall erect retaining walls and guardrail fences or provide slopes no steeper than one foot vertical to three feet horizontal in fill and one foot vertical to two feet horizontal in cut to ensure proper protection and lateral support. Where possible, a retaining wall shall be constructed outside the right-of-way on private property.
- (b) No retaining wall shall have a height above finished grade greater than five feet. Where necessary, a series of retaining walls may be constructed in a terraced effect provided the horizontal distance between the outside face of one wall is at least four feet from that of the next wall.
- (c) Landscaping shall be provided on slopes and on the terraces between retaining walls to reduce the visual impact of the construction. Such walls, fences, slopes and planting shall be subject to the Board's approval as to location, design and dimensions and shall be constructed in a manner satisfactory to the Town Engineer.

F. Construction of streets.

- (1) Notice to Town Engineer. Prior to any preparation for the construction of a street, the developer shall give 48 hours' notice to the Town Engineer.
- (2) Construction standards and procedures. The following construction and installation standards shall apply:
- (a) The area between the right-of-way lines shall be cleared and grubbed except for those trees intended to be preserved as street trees.
- (b) All excavation shall conform to the lines and grades shown on the approved definitive subdivision plan. Where mucky soils, ledge or clay is encountered within the right-of-way, it shall be removed entirely and, where necessary, replaced with ordinary borrow or other materials specified in Massachusetts Highway Department Standard Specifications for Highways and Bridges, latest edition. Where water is encountered, or is expected to be encountered within four feet of the finished grade of the street, subsurface drainage, of a design acceptable to the Town Engineer, shall be constructed.

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- (c) Boulders or ledge shall be removed to a depth of at least 24 inches below final grade when within the area to be paved. Extensive ledge areas may require installation of interceptor subdrains or perforated pipe. Where street and shoulder grades require more than two feet of cut or fill, retaining walls may be required along abutting property lines unless a suitable alternative is shown, such as an earth slope one foot vertical to two feet horizontal. In such cases, a slope easement of adequate width shall be obtained.
  - (d) The surfacing of every street shall be able to carry expected traffic for a period of at least 20 years without excessive costs for maintenance. A street shall have a subbase at least 12 inches deep, with eight inches of suitable gravel applied in two four-inch lifts, and four inches of crusher run gravel compacted to not less than 95% of maximum dry density by a roller weighing 12 tons or more. The wearing surface shall be Class I bituminous concrete Type I-1, a minimum of 3 1/2 inches consisting of a two-inch base course of binder mix and a one-and-one-half-inch finish course.
  - (e) No pavement shall be laid:
    - [1] After frost has penetrated the base more than one inch; or
    - [2] After the air temperature remains at or below freezing for more than a day; or
    - [3] After the final day for paving set by the Town Engineer, whichever occurs first.
  - (f) No paving shall be done under any adverse conditions, as determined by the Town Engineer.
  - (g) Any sections of pavement not meeting the approval of the Town Engineer shall be removed and replaced.
  - (h) Unless otherwise specified in these Regulations, all materials used in the construction of streets shall conform to the Town's Standard Specifications or, when not covered by the Standard Specifications, by the Massachusetts Highway Department Standard Specifications for Highways and Bridges, latest edition.
- (3) Restoration of street. Whenever the construction of utilities and/or connection to existing municipal services or facilities requires a street opening permit, the developer shall reconstruct the existing pavement, as follows:
- (a) By cold planing the entire width of the street to a depth of 1 1/2 inches, from the point of curvature of the curb rounding across the proposed subdivision street to the point of tangency of the opposite curb rounding; and
  - (b) Overlaying the cold planed area with a one-and-one-half-inch finish course of bituminous concrete.

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§ 175-46. Walks and paths.

A. Sidewalks.

- (1) Location. A sidewalk shall be located within, and adjacent to, the exterior line of the right-of-way. In the standard layout, the sidewalk shall be a uniform distance parallel to the paved section of the street and separated from it by a landscaped strip. The Planning Board may approve a meandering location in which the sidewalk may follow existing terrain with consideration of features such as stone walls, large, mature trees, rock outcroppings and similar features so that the construction of the sidewalk minimizes the disturbance to such features. All, or sections, of the meandering sidewalk may be located outside the right-of-way provided a proper easement to that effect is granted to the Town.
- (2) Alternative locations. The applicant may propose, or the Planning Board may require, that all or some of the walks be located within easements provided for in § 175-44C(4) in lieu of being located within the right-of-way of the street. The width and construction of walks in easements shall be the same as if within a street right-of-way.
- (3) Construction. Sidewalks shall be constructed of two one-and-one-half-inch courses of bituminous concrete on an eight-inch gravel foundation and shall pitch down towards the gutter 3/8 inch vertical for each horizontal foot. At its discretion, the Planning Board may require that a sidewalk be constructed of concrete rather than bituminous concrete. Where a new sidewalk is to be constructed in a short section to connect existing sidewalks, the Planning Board may allow the connecting section to be constructed to the same standards as the existing sidewalks.
- (4) Handicapped ramps required. Sidewalks shall extend to the paved roadway at intersections to provide convenient walk-off for crossings and shall have ramps for the handicapped designed to meet requirements set by the Commonwealth of Massachusetts Architectural Barriers Board.

B. Footpath and trails.

- (1) Objectives for footpaths and trails. Footpaths and trails shall be individually tailored, in width and material, to take full advantage of the area's unique natural surroundings with attention to the following objectives and standards:
  - (a) Build for durability by:
    - [1] Finding the most stable, well-drained soils that can bear the weight of pedestrian traffic;
    - [2] Building boardwalks where the soil is wet or unstable; and
    - [3] Using a switchback plan on slopes to inhibit erosion. Any work done within wetlands, or within 100 feet of wetlands, will require the filing of a notice of intent with the Conservation Commission.
  - (b) Minimize environmental impact by:

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- [1] Disturbing the environment surrounding the trail as little as possible;
    - [2] Leaving trees that will provide a natural check on the amount of undergrowth that will require maintenance;
    - [3] Designing for proper drainage;
    - [4] Harmonizing the trail with its environment; and
    - [5] Using natural construction materials, such as dirt, cobblestones or wood, where appropriate.
  - (c) Provide privacy for adjacent landowners by one or more of the following:
    - [1] Constructing a berm and/or fence;
    - [2] Planting trees and shrubs; and
    - [3] Allowing the natural vegetation to reclaim the area if it will provide sufficient protection.
  - (2) Paving of footpath or trail. If the footpath or trail is to be paved, its width will be determined by its location and proposed use. Construction specifications will be provided at the time the trail is approved by the Conservation Commission.
  - (3) Signs and/or identification. A sign and/or identification for a footpath or trail shall:
    - (a) Be placed at the entrance and junctions of trails;
    - (b) Be coordinated with the color of the existing signage used in the conservation areas in Lexington;
    - (c) Be indicated, where a trail meets a roadway, by painting green on the curb; and
    - (d) Be indicated, where the trail path crosses a roadway, by painting a green crosswalk.

C. Bicycle path/recreational path.

- (1) Where required. The Planning Board may require the construction of a bicycle path/recreational path:
  - (a) To provide a connection to a Town bicycle path/recreational path located on adjoining land; or
  - (b) Where the path would be part of an existing or proposed Town bicycle path/recreational path system or of bicycle path/recreational paths leading to a public school.
- (2) Construction. A bicycle path/recreational path shall be at least nine feet wide and shall be constructed of two one-and-one-half-inch courses of bituminous concrete on an eight-inch gravel foundation and shall pitch down towards its side at 3/8 inch vertical for each horizontal foot. Where a new bicycle path/recreational path is to be constructed in a short section to connect to an existing bicycle path/recreational path, the Planning

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Board may allow the connecting section to be constructed to the same standards as the existing bicycle path/recreational path.

§ 175-47. Utilities and underground facilities.

A. Standards for water and sewer service.

- (1) Construction requirements. All elements of the water and sanitary sewer service shall be designed in accordance with the Town's Standard Specifications.
- (2) Connection to Town system. Water and sanitary sewer mains shall connect to the municipal water supply and sanitary sewer systems, respectively.
- (3) Future extension and connection. As provided in § 175-45C(3), the Planning Board may require the developer to construct stubs of utility lines and other underground services to the edge of the right-of-way for either extension to adjoining lands or to serve lots abutting the subdivision street.
- (4) Testing prior to connection. Water mains and sewer lines and their appurtenances shall be installed, water mains shall be chlorinated and pressure tested, and sewer mains flushed and pressure tested, all in accordance with the Standard Specifications and approved by the Town Engineer prior to the issuance of a certificate of occupancy for any building.

B. Water mains.

- (1) Objectives. Water mains, laterals and appurtenances shall be designed to provide adequate water service for the needs of residents and for fire suppression.
- (2) Looped water system. The water system shall be designed to form a continuous loop with existing or proposed water mains. Dead-end mains are not permitted unless approved by the Town Engineer.
- (3) Construction requirements. The applicant shall provide data on the pressure and volume of the existing water main to which the proposed main is to be connected. The minimum size of a water main shall be eight inches in diameter or a larger diameter if required by the Town Engineer. The top of a water main shall be at least 4 1/2 feet below the finished grade.
- (4) Fire hydrants. Fire hydrants shall be spaced not more than 500 feet apart. A copy of the plan showing fire hydrant locations shall be submitted by the Planning Board to the Fire Chief for his/her comments and recommendations.

C. Sanitary sewers.

- (1) Objectives. Sanitary sewers, including all appurtenances, shall be designed to connect all lots in a subdivision to the municipal sewer system for treatment and disposal of sewage.
- (2) Construction requirements. The minimum size of a sanitary sewer main shall be eight inches in diameter or a larger diameter if required by the

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Town Engineer. The minimum design velocity of flow shall be two feet per second, except that house connections shall be at least 6 inches in diameter and shall pitch up from the sewer main towards the lot at least 1/4 inch vertical for each horizontal foot. Manholes shall be no more than 300 feet apart. The top of a sanitary sewer main shall be at least seven feet below the finished grade or, where necessary to connect to an existing main, at such other elevation as the Town Engineer may approve.

D. Electric power and communication lines.

- (1) Installation. All electric power lines and communication lines shall be installed in underground conduits. Communication lines shall include, but not be limited to, telephone, security alarm, and cable television.
- (2) Streetlighting. The developer shall show provisions for streetlighting on a plan subject to the approval of the Town Engineer. The developer shall install the conduit underground and construct the bases. Poles and streetlights shall not be installed without the prior written approval of the Town Engineer. The Town will consider alternative standards and fixtures and connections to alternative private electrical services.

§ 175-48. Stormwater management.

- A. Objectives. Stormwater runoff shall be disposed of through a combination of storage and controlled release. Lots shall be developed to maximize stormwater recharge on the lot and to minimize direct overland runoff onto adjoining lots, streets and watercourses. Peak flows and runoff at the boundaries of the subdivision shall be no higher following development than before development.
- B. Hydraulic calculations required. Hydraulic calculations, prepared by a registered professional engineer, shall be submitted to substantiate all design features of any proposed drainage system. Computations for runoff shall be made in accordance with standard engineering practice, acceptable to the Town Engineer, and the method of calculation shall be noted.
- C. Capacity. Drainage systems shall have adequate capacity to handle all stormwater runoff presently flowing through the subdivision, as well as to dispose of any additional runoff generated by the proposed development up to and including the runoff from a one-hundred-year storm using the following methods:
  - (1) The flow from storms of up to a twenty-five-year frequency and a twenty-four-hour duration shall be conveyed through the subdivision site, following natural drainage patterns wherever possible, in a manner which will maintain the ratio of runoff to infiltration at the same percentage as under natural conditions;
  - (2) Detention facilities shall be provided to handle all runoff which exceeds the percolation capacity of the site, up to and including the runoff generated by the one-hundred-year, twenty-four-hour storm.
- D. Stormwater retention areas; release rate.
  - (1) The combination of storage and design release rate shall not result in a storage duration of greater than 48 hours. Maximum depth of stormwater

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retention areas shall be four feet. The side slopes of a detention area shall be kept as close as possible to natural land contours, with a change of 10% or less wherever possible. Outlet control structures shall be designed to require little or no attention for proper operation.

- (2) Each stormwater detention area shall be provided with a method of emergency overflow in the event of a storm in excess of the one-hundred-year frequency type.
- E. Natural patterns. Natural drainage patterns shall be used wherever possible. All existing watercourses shall be left open unless approval to close them is obtained through the Conservation Commission. All new open watercourses shall be appropriately seeded, sodded, paved or rip rapped.
- F. Alteration of drainage pattern. Any alteration of land on the site shall be such that changes in existing patterns of drainage shall not adversely affect properties outside the subdivision by increasing the amount or rate of peak flow.
- G. Structured system. Where soil conditions or topography make use of natural drainage systems impractical and where existing drains in adjacent streets or easements are adequate in capacity to accommodate the drainage flow from the subdivision, a structured system shall be used and connected to the existing Town drainage system.
- H. Design standards for structured system. In a structured system, the minimum drainpipe size shall be at least 12 inches in diameter and the design velocity of flow shall be three feet per second, where obtainable, but not less than 2.5 feet per second. Catch basins shall be located at both sides of roadway not more than 250 feet apart, at low points in the street, and near the corners at intersecting streets or as necessary for proper interception of water runoff. Culverts shall be designed to accommodate a fifty-year frequency storm; underground storm drains, catch basins and related installations shall be designed to accommodate a twenty-five-year frequency storm.
- I. Drainage easements.
  - (1) Where it is necessary to carry drainage across lots within the subdivision, stormwater easements shall be provided, of such width and construction as will be adequate to accommodate the volume and velocity of the runoff. However, in no case shall the easements be less than 20 feet wide.
  - (2) When a proposed drainage system will carry water across land outside the subdivision boundaries to an approved outfall, appropriate drainage rights shall be secured by the developer and shall be referenced on the definitive plan.

#### § 175-49. Trees and landscaping.

##### A. Objectives and applicability.

- (1) Objectives. The Planning Board determines that:
  - (a) Trees and other plant materials planted within or along the right-of-way as part of a coordinated landscape plan improve the appearance and economic value of a subdivision;

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- (b) A landscaped island in the center of a turnaround is better than a paved surface covering the entire island;
  - (c) The owners of the lots that have frontage on the turnaround, individually and collectively, should maintain the landscaping in such islands, and the owners of other lots that have frontage on sections of the right-of-way within which landscaping is planted should maintain that landscaping;
  - (d) Every effort shall be made to preserve existing trees within the proposed right-of-way as well as within individual lots shown on the subdivision.
- (2) Compliance with landscape plan. All trees and other planting shall comply with the landscape plan [See § 175-11A(7) of Part 1, Article II of this chapter.] which is part of the approved definitive subdivision plan.

**B. Street trees.**

- (1) Location. Street trees shall be planted, at the developer's expense, on each street within the tract being subdivided. Trees shall be planted within the street right-of-way between the area designated for sidewalks and the side line of the street pavement and shall be spaced approximately 50 feet apart on center, but no closer than 35 feet on center.
- (2) Species. The species of street trees selected shall be of a USDA Zone 5 hardiness and shall be licensed nursery stock with good root development and branching characteristics, and with a one-year warranty. Existing trees may be preserved as required street trees if they are a species and size that is consistent with the landscape plan and if they are approved by the Superintendent of Parks and Trees. Depending on the availability of stock, substitutions to a comparable species may be approved by the Superintendent of Parks and Trees.
- (3) Size. The minimum size of street trees shall be three inches in caliper, measured four feet from the ground level, and eight to 10 feet of height in place.
- (4) Planting. Street trees shall be planted in holes of a depth and width of two times the diameter of the root ball. Trees shall be planted at their proper depth and in good quality topsoil and shall be securely staked.

**C. Cul-de-sac plantings.** The center island of a cul-de-sac shall be landscaped using one or more of the following options: planting of perennial grass by either sod or seed in loam that is at least six inches deep; planting of trees or nursery-grown, well-rooted shrubs and ground cover; retaining existing vegetation, if approved by the Planning Board; rock or stone if used as a design feature; or a combination of those options as shown on the landscape plan [See § 175-11A(7) of Part 1, Article II of this chapter.] that is part of the approved definitive subdivision plan.

**D. Landscaping for other areas.**

- (1) Landscaped planting strip. Between the sidewalk, or street side line where no sidewalk is required, and the edge of the roadway, bituminous berm or

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curbing, there shall be installed grass plots consisting of loam seeded with grass in accordance with the Standard Specifications. The grass plots shall meet the grade at the sidewalk or side line of the right-of-way and at the gutter, curbing or bituminous concrete berm.

- (2) Restoration of slopes. All cut and fill slopes subject to erosion and adjoining the right-of-way shall be planted with suitable well-rooted, low-growing plant materials as shown on the landscape plan. Plants and/or perennial grass shall be suited to the adjoining landscape and located to provide adequate cover. The Planning Board may require the planting of sod and the use of other erosion control measures where warranted.
- E. Deed provisions for maintaining landscaping. Language shall be placed in the deeds of all lots with frontage on the turnaround assigning to the owners of those lots the collective responsibility for maintaining the landscaped island in the cul-de-sac. Language shall be placed in the deed of each lot that has frontage on a section of the right-of-way within which landscaping is planted assigning to the owner of that lot responsibility for maintaining the landscaping in front of the lot.

§ 175-50. Reservation of land for public purposes.

- A. Designation for reservation. The Planning Board may require the designation of one or more parts of the subdivision tract for reservation for a period of three years for park, playground, open space or other municipal purposes. The reservation of land shall not be unreasonable in relation to the size of the tract being subdivided and to the prospective uses of the reserved land.
- B. Notation on plan. If the Planning Board designates land for reservation for municipal purposes, a notation shall be made on the definitive subdivision plan concerning the area being reserved and the requirement that no street, utilities, building, or other improvements within the boundaries of the land being reserved may be made for a period of three years from the date of endorsement of the plan without the Board's prior written approval.
- C. Action by Town within three years. During the three-year reservation period, the Town may elect to acquire any or all of the reserved land and shall justly compensate the owner for the land acquired. If the Town does not elect to acquire the land within the three-year reservation period, the developer may proceed with improvements in accordance with the approved subdivision plan.



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## Article IX. IMPLEMENTATION AND CONSTRUCTION OF APPROVED DEFINITIVE SUBDIVISION PLAN

### § 175-51. General conditions.

#### A. Compliance with plan, regulations and specifications.

- (1) Developer's responsibility. The developer shall arrange, perform or contract and pay for all services and material needed for the installation of municipal services and facilities, including but not limited to:
  - (a) Storm drains, sanitary sewers, water supply, and underground facilities for electric, telephone, and cable television;
  - (b) The construction of streets and other improvements within the right-of-way, such as roadbed preparation, pavement, driveway aprons, sidewalks, curbing, guardrails, retaining walls, fences, non-regulatory street signs, bounds, and roadside improvement such as grass plots, treatment of slopes, trees and other landscaping;
  - (c) Walkways and/or bicycle/recreational paths that provide access to open space, and improvements within the open space;
  - (d) Preparation of plans, surveys, management of construction, preparation of certificates and all other administrative activities related to construction and compliance with the Subdivision Rules and Regulations.
- (2) All of the required improvements shall be installed or constructed in accordance with applicable provisions of these Regulations or as shown on approved definitive plans or as specified in the Planning Board's certificate of action, or in any covenants and agreements executed by the developer and approved by the Board.
- (3) Compliance with Standard Specifications. Unless stated otherwise in these Regulations or in the conditions in the certificate of action approving the subdivision, all materials, workmanship and methods shall comply with the Town's Standard Specifications. Nothing in the Standard Specifications shall be construed to authorize any deviation from these Regulations, the approved definitive plans or the conditions in the certificate of action approving the subdivision.

#### B. Maximum time for completion of construction.

- (1) Completion within two years. The construction of all streets and the installation of all municipal services shall be completed, in accordance with the approved plans, these Regulations and the Standard Specifications and any approved change orders, within two years from the date the approved plan is recorded at the Registry of Deeds. Failure to complete construction within that time is grounds for the Planning Board to rescind approval of the subdivision or to amend the approved subdivision plan.
- (2) Extension of time for completion. A developer may request an extension of the two-year period in which the required improvements must be constructed. The developer shall submit a written request to the Planning

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Board, at least 30 days prior to the expiration of the time period, stating the reasons why an extension is requested and what further time period is required for completion. The Planning Board may grant an extension of not more than one year for good cause. More than one extension may be granted.

- (3) Conditions of approving extension. As a condition of permitting the extension, the Planning Board may:
  - (a) Require that the amount of any surety be revised, and the amount may be greater than previously established, to ensure that sufficient funds are available to insure the completion of the required improvements;
  - (b) Require that the covenant be revised to reflect the increased construction period; and
  - (c) Impose any additional conditions, as may be needed, to ensure satisfactory completion of the improvements.

C. Construction not in compliance; stop-work order.

- (1) Stop-work order for noncompliance. The Planning Board may order that work on the construction of the subdivision shall be stopped if, at any time:
  - (a) Construction activities are initiated prior to approval by the Planning Board; or
  - (b) The construction of the subdivision is not in compliance with the approved plans, the certificate of action issued by the Planning Board, or the Subdivision Rules and Regulations, or any approved change order.
- (2) Planning Director authorized to stop work. The Planning Director, or the Senior Planner, is authorized to issue a stop-work order in behalf of the Board where the time period between the detection of the noncomplying construction and the next scheduled Planning Board meeting warrants prompt action.
- (3) Stop-work order: related actions. If the Planning Board issues a stop-work order, it may also:
  - (a) Require that additional surety be provided to allow for correction of the noncomplying construction;
  - (b) Suspend or rescind the release of any, or all, lots which have not already been conveyed, or for which building permits have not already been issued, by filing a notice of such suspension or rescission in the Registry of Deeds or Land Court; or
  - (c) Request that the Building Commissioner defer issuing any additional building permits or certificates of occupancy until the noncomplying construction is brought into compliance;

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- (d) Require that the Town Engineer reinspect incorrect construction to determine that it has been corrected, as provided in § 175-44D(6) of these Regulations;
  - (e) Issue a notice of violation, including payment of a fine therefor, or prosecute the violation as provided in § 175-26E of these Regulations; or
  - (f) Rescind its approval of the approved subdivision, as provided in § 175-59 of this Part 2, if, after the Board has issued a stop-work order, the developer persists in construction of the subdivision in a way that is not in compliance with the approved plans or the conditions cited in the stop-work order are not corrected within one year of the date the stop-work order was issued.

D. Reimbursement for extra construction.

- (1) Streets and facilities of greater size. Where the Board requires an applicant to install municipal services or facilities or construct a street of greater width or size than the requirements set forth in these Regulations for the subdivision alone, the Board may recommend to the Town Meeting that the developer be reimbursed for the cost of such additional installation or construction, as determined by the Planning Board, in accordance with Chapter 570, Acts of 1962, Massachusetts Legislature.
- (2) Streets and facilities not eligible for reimbursement. A developer will not be reimbursed for:
  - (a) The construction of any street with a pavement width that is 32 feet or less; or
  - (b) The construction of a street and services of greater than standard size where, in the opinion of the Board, such greater size is needed to serve the subdivision; or
  - (c) For extending a street or services to the boundaries of the subdivision in anticipation of subsequent extension to adjoining land.

E. Plans and documents available at all times. The developer shall maintain copies of the approved plan, the certificate of action issued by the Planning Board, the documents recorded with the plan, and any approved change orders at his/her usual place of business and on the site during construction. The developer shall provide copies of the approved plan, the certificate of action issued by the Planning Board, the documents recorded with the plan, and any approved change orders to any broker, agent, development entity, builder, or attorney authorized to act in the development, sale or rental of property within the subdivision and they, in turn, shall maintain a copy of the plans and of those documents at their usual place of business and furnish them to any person interested in constructing, purchasing or renting a lot or a dwelling unit.

§ 175-52. Endorsement of approved plan.

- A. Endorsement after appeal period expires. Unless the Town Clerk receives a written notice of a judicial appeal of the Planning Board's decision, as provided in the Subdivision Control Law, within 20 days of the date the Planning Board

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filed its certificate of action approving the definitive subdivision plan, the Town Clerk shall endorse the definitive subdivision plan with a certificate stating that no appeal has been filed. The Planning Board shall only endorse an approved definitive subdivision plan after the Town Clerk has certified that no appeal has been filed.

B. Space for signatures. Suitable space shall be provided on each sheet of the plans for the certificate and signature of the Town Clerk and the signature of all five members of the Planning Board, with space for the date of the endorsement below the signatures.

C. Other notes.

(1) Prior to endorsement, the applicant shall place the following notes on each of the sheets of the plan which are to be recorded (See § 175-53A.):

In accordance with a certificate of action dated \_\_\_\_\_ (giving the date the Planning Board's certificate of action was filed with the Town Clerk) and recorded herewith.

(2) Subsection F(1) requires that the applicant provide a performance guaranty prior to endorsement with a note on the plan. If that performance guaranty is a covenant, the note shall state:

In accordance with a covenant dated \_\_\_\_\_ (giving the date the covenant was executed by the applicant) and recorded herewith.

D. Planning Director may endorse. If the Planning Board is not able to endorse the plan after the expiration of the appeal period, it may authorize the Planning Director or the Senior Planner to endorse the plan and such authorization shall be noted on the plan.

E. Endorsement after appeal. If an appeal of its decision is filed, the Planning Board shall endorse the plan only if it receives a court decision, stipulation or other court order directing it to endorse the plan.

F. Actions prior to endorsement.

(1) Performance guaranty required before endorsement. The applicant shall submit a performance guaranty to secure the construction of street(s) and the installation of municipal services before the Planning Board endorses an approved definitive subdivision plan.

(2) Actions to be completed before endorsement. Where the Planning Board's certificate of action specifies, certain actions must be completed before the Board will endorse the plan. In addition to furnishing the performance guaranty, these actions may include, but are not limited to, the following:

(a) Changes to the plans requested by the Planning Board;

(b) Furnishing written evidence from the Town's Revenue Officer that all outstanding financial obligations to the Town of Lexington applicable to the development tract have been met, such as:

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- [1] Payment of the real estate taxes; and
    - [2] Payment of any outstanding fines or other charges;
  - (c) If necessary, submitting approval not required plans to transfer parcels of land affecting abutters but not within the boundaries of the subdivision.
  - G. No changes after endorsement. After the plans are endorsed, no changes to the original signed copies are to be made by the applicant or any person acting in his/her behalf.
  - H. Approval rescinded if conditions not met in six months. If the conditions to be met prior to endorsement that are set forth in the Planning Board's certificate of action are not satisfied within six months from the date of its filing, the Planning Board may vote to rescind its approval of the subdivision.

§ 175-53. Recording of approved plan.

- A. Sheets to be recorded or retained. The Planning Board's policy is to have recorded those sheets in the approved definitive subdivision plan that affect the property rights or other interests in land, and those sheets that show specific features that are cited in special conditions in the certificate of action. The Board's policy is that those sheets in the approved definitive subdivision plan that show typical construction details, existing site conditions, the site analysis, or the proposed development of the site in general will not be recorded. Those sheets that are not recorded will be retained by the Planning Department and the Town Engineer until all construction has been satisfactorily completed, as-built plans are filed and a certificate of completion is issued by the Board.
- B. Related documents recorded with plan. All other documents related to the approved subdivision plan will be recorded concurrently with the approved plan. The applicant will be responsible for recording the approved plan and all accompanying documents in the company of the Town Counsel. The documents that must be submitted and approved by the Town Counsel prior to recording may include, but are not limited to, the following:
  - (1) A covenant or evidence of another form of performance guaranty;
  - (2) A copy of any easement that will be granted to the Town for: access to the utilities prior to street acceptance, access across private property to reach land to be owned by the public or to which the public will have a right of access and use, water service, storm drainage, and sanitary sewer, and conservation, recreation or other public purposes and a copy of the language to be placed in the applicable deeds, to run with the land, detailing those restrictions;
  - (3) A copy of the deeds conveying parcels to the Town;
  - (4) If applicable, a copy of the language to be placed in the applicable deeds, to run with the land, as follows:
    - (a) Assigning to the owners of certain lots the responsibility for maintaining the landscaped island in a turnaround;

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- (b) Assigning to the owners of lots the responsibility for maintaining the street trees, or other landscape features, in the right-of-way adjacent to their respective lots.
  - C. Fee for recording. There shall be a fee to cover the costs to the Town, including those of the Town Counsel, for its part in reviewing all documents and the recording of the plan and related documents. This fee, payable to the Town of Lexington, covers the Town's expenses only and does not include any fees or charges of the Registry of Deeds or the Land Court. The fee for the review of documents and the recording of plans and documents is authorized in § 175-28 of this Part 2 and is set forth in § 175-12D(7) of Part 1, Article II of this chapter and is incorporated by reference here.
  - D. Copies of approved plan. The applicant shall, at his/her expense, provide copies of the approved plan to the Board after its endorsement. Section 175-12B(4) of Part 1, Article II of this chapter describes the number and type of copies to be furnished and is incorporated by reference here.

§ 175-54. Performance guaranties.

- A. Performance guaranty required. Before endorsing an approved definitive subdivision plan, the Planning Board shall require that the developer file with the Board a performance guaranty to secure the construction of a street and the installation of municipal services by one of the two methods of performance guaranties permitted under MGL c. 41, § 81U and further described as a covenant (See Subsection B.) or surety (See Subsection C.). The developer may select, and change, the method of providing the performance guaranty from time to time.
- B. Covenant.
  - (1) Provisions of covenant. A covenant shall provide that the street(s) shall be constructed and the municipal services shall be installed as shown on the approved definitive subdivision plan, and in accordance with the Subdivision Regulations and the Standard Specifications and any approved change orders, and that no lot may be built upon or conveyed, other than by mortgage deed, until:
    - (a) Satisfactory completion of the street(s) and the installation of municipal services serving the lot; or
    - (b) Sufficient surety has been furnished and approved by the Planning Board to guarantee the satisfactory completion of the street and the installation of municipal services.
  - (2) Effect of covenant on foreclosure or single deed. A mortgagee who acquires title to the mortgaged premises by foreclosure, or otherwise, and any succeeding owner of such premises or part thereof, may sell any lot, subject to that portion of the covenant that provides that no lot shall be built upon until the street and services have been provided to serve the lot. A conveyance is permitted by a single deed, subject to the covenant, of either the entire parcel of land shown on the definitive subdivision plan or of all lots not previously released by the Planning Board.

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- (3) Covenant binding on successors. The covenant shall run with the land and shall be binding upon the developer and any successors in title to the land, or any portions thereof, to which the covenant refers. If title to any land subject to the covenant is transferred to another:
    - (a) The Planning Board shall be provided with the name, address, and telephone number of the new owner and of the representative, if other than the owner, responsible for the project; and
    - (b) A new covenant shall be executed by the new owner and recorded.
  - (4) Form of covenant. The Planning Board shall approve both the form and content of the covenant and it shall be recorded with the subdivision plan.
  - (5) Note required on plan. If the applicant provides the required performance guaranty by a covenant, the following note shall be inscribed on the plan:

In accordance with a covenant dated \_\_\_\_\_ (giving the date the covenant was executed by the applicant) and recorded herewith.

#### C. Surety.

- (1) Performance guaranty by surety. The developer may furnish a performance guaranty by surety that the Planning Board determines is sufficient to secure the construction of a street(s) and the installation of municipal services for lots in the subdivision in accordance with the approved definitive plan, these Regulations, the Standard Specifications and any approved change orders.
- (2) Types of surety. The surety may be provided:
  - (a) By a deposit of money or negotiable securities, or by a bond; the developer shall specify the time within which the construction shall be completed, provided that period does not exceed the two-year period from the date of recording of the definitive plan specified in § **175-51B(1)**;
  - (b) By an agreement with a financial institution executed after the recording of a first mortgage covering the premises shown on the plan, or a portion thereof, given as security for advances to be made to the developer by the financial institution, which agreement shall be executed by the developer and the financial institution. The agreement shall provide for the retention by the financial institution of funds otherwise due the developer and sufficient, in the opinion of the Planning Board, to secure the construction of the street(s) and the installation of municipal services. The agreement shall also provide for a schedule of disbursements that may be made to the developer upon completion of various stages of the work. The agreement shall further provide that in the event the work is not satisfactorily completed within the time set forth by the developer, any funds remaining undisbursed shall be available to the Town for completion of the street(s) and municipal services.

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- (3) Forms of surety acceptable to Lexington Planning Board. The surety provided as a performance guaranty may be any of the types listed in Subsection **C(2)**, but only those types. Any type of surety shall include a standard form provided by the Planning Board or an alternative form approved by both the Town Treasurer and the Planning Board.
  - (4) Treasurer's review of financial instruments and institutions. Prior to submittal to the Planning Board, all proposed financial instruments to be used as a performance guaranty shall be reviewed by the Town Treasurer to determine if they are financially sound. The Planning Board reserves the right to limit its approval of surety to types of financial instruments and financial institutions that the Town Treasurer believes are financially sound.

D. Establishing amount of surety.

- (1) Required improvements defined. As used in this section, the term "required improvements" shall mean the construction of the street(s) and the installation of municipal services in accordance with the approved definitive subdivision plan and to comply with the Subdivision Regulations and the Standard Specifications and any approved change orders.
- (2) Recommendation of Town Engineer; administrative costs. When the Planning Board sets the amount of surety initially, or at any subsequent time, it shall consider the recommendation of the Town Engineer as to the amount of money necessary to complete the required improvements as described in Subsection **D(1)**. The amount of surety set by the Planning Board may include allowances for: contingencies, escalation of construction costs due to inflation, and the administrative cost to the Town of managing the completion of the streets and municipal services in the event of the developer's nonperformance as set forth in Subsection **F** of this section.
- (3) Amount of surety set for one-year period. The Planning Board may set the amount of surety to be held by the Town, whether initially or at any subsequent time, for a period of not more than one year. If the development is not completed by the end of the one-year period, the Planning Board may reevaluate the amount of surety held in relation to the amount of work remaining to be completed and the then-estimated construction costs. If necessary to cover the costs of completing the outstanding work, the Planning Board may set a higher amount than that previously established and may require that additional surety be provided.
- (4) Surety in extending time period for completion. As a condition of permitting the extension of the time for completion of the work, as provided in § **175-51B(3)**, the Planning Board may revise the amount of surety.
- (5) Estimated cost to construct to set amount of surety. When the developer first proposes to furnish the performance guaranty by the provision of surety, or at any subsequent time when he/she requests to reduce the amount of surety held by the Town, he/she shall submit:

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- (a) An estimate of the amount of work completed, if any, and the amount remaining to be completed on an estimated cost to construct form as described in § **175-55B(2)** through **B(4)**; and
  - (b) If any work has been completed, certificates of completion, as described in § **175-55G**, by the engineer and landscape architect, that the completed construction of the required improvements as described in Subsection **D(1)** or installation of trees and other plant materials complies with the approved definitive subdivision plan and all approved change orders.

E. Reduction of surety.

- (1) Planning Board may reduce amount of surety. When some of the improvements for which surety has been provided have been satisfactorily completed, the Planning Board may reduce the amount of the surety to an amount not less than the estimated cost to complete the remainder of the required improvements as described in Subsection **D(1)**, including the allowances described in Subsection **D(2)**. The Board may reduce the amount of surety upon receipt of a written request by the developer, or upon its own initiative.
- (2) Documentation by developer; Town Engineer's recommendation. Prior to a vote to reduce the amount of the surety, the developer shall submit the documentation described in Subsection **D(5)(a)** and **(b)** to the Planning Board. The Board will request a statement from the Town Engineer as to which of the required improvements as described in Subsection **D(1)** have been satisfactorily completed and a recommendation as to the amount of money necessary to complete the remaining required improvements.
- (3) Authority to reduce surety. The Planning Board shall transmit copies of any vote authorizing a reduction in the amount of surety to the developer, the Town Treasurer, and to the financial institution holding the surety authorizing them to reduce the amount being held.
- (4) Reduction may not be below 15% of original amount. The Planning Board's policy is that the amount of the surety held by the Town shall not be less than 15% of the original estimated cost to construct until all actions required by the definitive subdivision plan and by the certificate of action approving the subdivision plan have been satisfactorily completed, the Planning Board approves a certificate of subdivision completion [See § **175-56A(1)**.] and votes to release all surety being held.

F. Use of surety by the Town due to nonperformance.

- (1) Determination of nonperformance. The Planning Board may vote to determine that the work on the required improvements, as described in Subsection **D(1)**, is incomplete if any of the following occurs and may authorize the Town to expend the funds in the surety to complete such construction and installation:
  - (a) The developer's work is not proceeding continuously and expeditiously to completion so far as is reasonably practicable under the circumstances; or

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- (b) The construction is not completed within two years of the date the approved plan was recorded at the Registry of Deeds or, as provided in § **175-51B(1)**, within one year of the date on which the Planning Board may have granted an extension of time; or
  - (c) If the construction is not in accordance with the approved definitive plan and in compliance with the Standard Specifications and any approved change orders.
- (2) Notification to developer before use of surety. Prior to expending funds from the surety, the Planning Board shall notify the developer in writing that:
- (a) The Board has determined that:
    - [1] The construction of the required improvements, as described in Subsection **D(1)**, is incomplete;
    - [2] Work is not proceeding continuously and expeditiously to completion; and
    - [3] Intervention by the Town may be necessary to complete the work; and
  - (b) If work is not resumed within 60 days of the date of notification, and does not proceed continuously and expeditiously to completion, the Planning Board will order that the Town complete the work.
- (3) Actions if work not resumed within 60 days. If the developer does not resume work, that proceeds continuously and expeditiously to completion, within 60 days of the date of notification, the Planning Board may:
- (a) Order that all further work by the developer on the construction of the required improvements as described in Subsection **D(1)** be stopped; and
  - (b) Authorize the Town Engineer, or such registered professional engineer as the Town may employ, to determine what work on the construction of the required improvements, as described in Subsection **D(1)**, is required so that the construction will be in accordance with the approved definitive subdivision plan and in compliance with the Standard Specifications and any approved change orders.
    - [1] Such determination shall include, but not be limited to, work that:
      - [a] Has not been installed correctly or completed satisfactorily and needs to be revised or replaced; and
      - [b] Has not been constructed and remains to be done.
    - [2] Such determination shall be submitted in a written report to the Planning Board, a copy of which shall be sent to the developer, and shall be one of the bases for determining what work needs to be done by, or in behalf of, the Town. The cost of such determination is considered to be a part of the administrative

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cost to the Town for managing the completion of the streets and municipal services and shall be charged to the funds available in the surety.

- (4) Approval prior to expenditure of surety funds. Prior to the expenditure of funds from the surety, the Planning Board shall obtain the approval of the Board of Selectmen if the expenditure does not exceed \$100,000 and from the Town Meeting if the expenditure does exceed \$100,000.
- (5) Planning Board may seek assistance. In order to complete the required improvements, as described in Subsection **D(1)**, the Planning Board may seek the assistance of the Board of Selectmen, the Town Manager, the Department of Public Works, the Town Engineer and of such private consultants or private contractors as the Town may choose. All costs associated with the completion, including but not limited to the administrative costs to the Town for managing the completion, may be charged to the funds available in the surety. The Town's Comptroller shall maintain a record of all expenditures incurred in the completion of the subdivision.
- (6) Access to the site. Any Town official or employee cited in Subsection **F(5)**, or any consultant or contractor acting in behalf of the Town, is authorized to enter the subdivision site and take all actions related to the completion of the work.
- (7) Recovery of additional costs to complete subdivision. If the amount of surety available from the developer is not sufficient to complete the required improvements and/or to remedy any failure of improvements installed incorrectly, the Town may initiate proceedings to recover the additional costs necessary from the subdivider to complete and correct all required work.
- (8) Funds remaining after completion. If there are funds remaining in the surety after the Town has taken all actions necessary to complete the required improvements and/or to remedy any failure of improvements installed incorrectly, the developer or, in his/her absence, the financial institution that holds the surety may file a written request for final release of surety as provided in § **175-56** of these Regulations.

**G. Release of lots.**

- (1) Planning Board may release lots. If the developer submits a written request and if sufficient surety has been furnished, as provided in Subsection **C**, the Planning Board may release one or more lots from the condition in the covenant that no lot may be built upon or conveyed. The developer shall record the release in the Registry of Deeds and provide the Planning Board with documentation the release has been recorded.
- (2) Rescission of release of lot.
  - (a) The Planning Board may rescind a release of one or more lots previously voted, as provided in other provisions of these Regulations, in the event that:

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- [1] The developer desires to change the type of performance guaranty from surety to a covenant (See Subsection **H.**);
  - [2] The Board votes to rescind its approval of the definitive subdivision plan. (See § 175-59, Rescission of previously approved subdivision plan.)
- (b) Rescission of a release of a lot shall be recorded in the same manner as provided in Subsection **G(1)** or the Town may record it.

**H. Conversion from surety to covenant.**

- (1) Procedure to convert. The developer may change the type of performance guaranty from surety to a covenant for one or more parts of a subdivision in which no lots have been sold and for which no building permits have been issued by submitting to the Planning Board:
  - (a) A plan on Mylar or linen tracing cloth and three copies of the definitive subdivision plan, clearly identifying the part(s) of the plan that is to be subject to the covenant;
  - (b) A written request for the Planning Board to release the surety previously furnished to secure the required improvements as described in Subsection **D(1)**, in that part of the subdivision for which the conversion to covenant is requested, and to rescind the release of all lots, not already deeded to others, that are protected by that surety; and
  - (c) If part of the subdivision will still be subject to surety previously furnished and part will be subject to a covenant, a graphic delineation clearly identifying the parts of the subdivision for which surety will remain as the performance guaranty and the amount of the surety that is necessary to insure the completion of the work to service the lots in those parts of the subdivision. The Planning Board may vote to reduce the amount of surety accordingly following the procedures outlined in Subsection **E** for reduction of surety.
- (2) Approval of conversion; endorsement of plan. If the Planning Board approves the conversion from surety to covenant and accepts the revised covenant, a reference shall be inscribed on the plan described in Subsection **H(1)(a)** and the Planning Board shall endorse the plan in the same manner as provided in § 175-52 for the endorsement of the original approved definitive subdivision plan.
- (3) Copies of plan. The developer shall provide copies of the plan described in Subsection **H(1)(a)** to the Planning Board. [See § 175-12B(4) of Part 1, Article II of this chapter.]
- (4) Plan and revised covenant to be recorded. The developer, at his/her expense, shall record the plan described in Subsection **H(1)(a)**, with the signatures of the Planning Board, and the revised covenant at the Registry of Deeds and shall provide certified copies of all documents recorded to the Planning Board.

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§ 175-55. Construction and inspection.

A. General conditions.

- (1) When construction work may start. No construction work on the construction of a street or the installation of municipal services may be started until:
  - (a) The following documents have been recorded in the Registry of Deeds:
    - [1] The definitive subdivision plan and the certificate of action approving it; and
    - [2] The documents listed in § 175-53B, such as the covenant or other form of performance guaranty, and any required easements or deeds;
  - (b) The administrative steps listed in Subsection B have been completed; and
  - (c) The fee prescribed by Subsection A(3) has been paid.
- (2) Construction work defined.
  - (a) For the purposes of this section, construction work includes:
    - [1] Excavation and removal of earth materials, or the clearing of trees or brush, preparatory to the construction of a street or the installation of municipal services;
    - [2] Excavation of trenches for installation of utility lines or other municipal services;
    - [3] Installation of earth materials that would comprise the base for a roadway; or
    - [4] Installation of pipes or other structures.
  - (b) The following are not considered to constitute construction:
    - [1] Surveying, the location of grade stakes or the limit-of-work line, and similar work preparatory to construction; or
    - [2] Clearing of brush or trees or the removal of earth materials from the site within the limit-of-work line, but only to the same degree that a private property owner, who is not constructing a subdivision, is permitted to do in accordance with Town bylaws and regulations.
- (3) Fee for inspection of construction. There shall be a fee to cover the costs to the Town for inspection of construction, review of estimated costs to establish the amount of surety required and review of final plans and plans for acceptance, by the Town, of a street and municipal services. The fee for inspection of construction and related reviews is set forth in § 175-12D(7) of Part 1, Article II of this chapter. The fee is payable prior to the start of construction.

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- (4) Authority to inspect. The Planning Board authorizes the Town Engineer and the Director of Public Works, directly or through employees of the Public Works Department, to act for the Board to inspect the work in subdivisions and review documents to ensure that they are installed in accordance with the approved definitive subdivision plan, the Subdivision Regulations, the Standard Specifications, and good engineering practice. The Planning Board may also employ other expert engineering and technical assistance to ensure proper administration of the construction.
  - (5) Schedule; access for inspection. The developer shall keep the Town Engineer informed of the progress of the work and shall provide safe and convenient access to all parts of the work for inspection by persons acting for the Planning Board. No work will be approved or accepted by the Town that has been covered before such inspection.
  - (6) Hours of construction. No construction activity on the property which causes noise, vibrations, glare, dust, debris or other detrimental impact, and is perceptible on, or affects, any adjacent lots, shall take place prior to 7:00 a.m. or after 7:30 p.m.

**B. Administrative steps prior to construction.**

- (1) Filings; arrangements with Town Engineer. The developer shall complete the following tasks before construction may begin:
  - (a) File with the Town Engineer and the Planning Director a detailed description and a schedule of the sequence of the work to be done, including a description, as appropriate, of the erosion and sedimentation control measures to be employed at each phase of construction;
  - (b) Arrange with the Town Engineer for periodic inspections of work during the construction period;
  - (c) File an estimated cost to construct [See Subsection **B(2).**] with, and obtain the approval of, the Planning Director.
- (2) Estimated cost to construct: information required. The estimated cost to construct is an estimate of the cost of construction, including quantities, of all street(s) and municipal services as shown on the approved definitive subdivision plan. The estimated cost to construct shall include:
  - (a) The estimated quantities, calculated by linear foot, cubic yard, square foot and other appropriate itemizations of quantities, and the estimated costs, in current construction year dollars, of all materials, including the cost of their installation, to be used in the construction of proposed street(s) and other municipal services;
  - (b) Other costs related to installation and construction, including but not limited to fees for: engineering, construction management and supervision, and certification of completion;
  - (c) An allowance for contingencies and increased costs due to inflation during the proposed construction period;

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- (d) The estimated costs to prepare as-built plans and, if applicable, a street acceptance plan, separate from the as-built plans.
  - (3) Estimated cost to construct: form. The original estimated cost to construct shall show the original estimate of quantities and costs, separated into the four categories outlined in Subsection **B(2)**. Any estimated cost to construct submitted subsequently shall also show:
    - (a) The amount of work (in quantities) and the actual cost of the work completed to date;
    - (b) The amount of work (in quantities) and the estimated cost of the work remaining to be completed.
  - (4) Estimated cost to construct: time period. The original estimated cost to construct may be for a maximum of two years to comply with the requirement of § **175-51B(1)** that the construction of the subdivision shall be completed within two years. Any subsequent estimated cost to construct shall be for a maximum of one year to comply with the requirement of § **175-54D(3)** that the amount of surety shall be set for a period not to exceed one year.
  - (5) Street opening permit. The developer shall obtain a permit for a street opening from the Public Works Department prior to opening any public street for the purpose of connecting water, sewer, drainage or any other utilities by any contractor working in his/her behalf. When a public street is opened, the developer shall restore the section of the street, as described in § **175-45F(3)**, and complete the work expeditiously.
  - (6) Temporary easement. The developer shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon his/her land for construction or planting.

C. Detailed decisions or changes during construction.

- (1) Limit-of-work line. Prior to the start of construction, the location of the roadway shall be staked and the limit-of-work line delineated in the field, and both shall be approved by the Town Engineer, or his designee.
- (2) Location of permanent bounds. Permanent bounds or monuments, as specified by the Town's Standard Specifications, shall be set at all angle points and at the beginning and end of each curve on the exterior lines of the right-of-way.
- (3) Plan for mailboxes. If the United States Postal Service requires that some or all mailboxes for houses in a new subdivision be in one location, a plan shall be submitted to the Planning Board showing the location of the mailbox structure, along with a written approval from the local United States Postal Service office, prior to installing the mailbox structure.
- (4) House numbers. The developer shall provide house numbers in locations near the driveway or main entrance to the building and readily visible from the street. If the numbers are located not more than 50 feet from the edge of the street, the numbers shall be at least three inches high; if more than

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50 but less than 100 feet, the numbers shall be at least four inches high; if more than 100 but less than 200 feet, the numbers shall be at least five inches high; if more than 200 feet, the numbers shall be at least six inches high.

- (5) Trees and plants: timing of installation; maintained in healthy condition. After the completion of the construction in the right-of-way, trees and plants shall be planted in the right-of-way, in accordance with the recommendation of the Superintendent of Parks and Trees. If the location and/or species of the trees or plants are changed from the approved landscape plan by direction, or with the approval, of the Superintendent of Parks and Trees, the new information shall be submitted on a plan to the Planning Board upon completion of the planting. The developer shall be responsible for maintaining, in a healthy condition, all new trees and shrubs planted in the right-of-way of the street(s), or any easement, or walks or paths, for a period of one year after planting. After one growing season, trees or plants that are dead, damaged or not likely to survive in a healthy state shall be replaced in kind and maintained for at least one additional growing season.
- (6) Changes during construction. During construction, changes from the approved definitive subdivision plan may be made with the prior written approval of a change order by the Planning Director, or by the Planning Board. A "change" is a modification in the required improvements as shown on the approved subdivision plan or other construction features of the approved subdivision plan that would not require a revision of the information on those sheets in the approved subdivision plan that are required by § 175-53A to be recorded in the Registry of Deeds or of the special conditions contained in the certificate of action by which the Planning Board has approved the subdivision plan. A change order, whether approved by the Planning Director or the Planning Board, does not require a public hearing and is not considered to be an amendment to the approved definitive subdivision plan.
- (7) Minor change. A minor change will typically deal with construction details within the right-of-way for the subdivision street(s), or an easement, or a walk or path, as shown on the detail sheets included in the approved plan. A change to the profile and final contours of the roadway is considered to be a substantial change and must be approved by the Planning Board. A minor change may be made with the prior written approval of the Planning Director, after considering the recommendation of the Town Engineer.
- (8) Major change. A major change will typically deal with the overall appearance of the development and improvements that may affect private lots. A major change shall be made only with the approval of the Planning Board after considering the recommendation of the Town Engineer.
- (9) Procedure for changes.
  - (a) The developer shall submit any desired change as a written change order, to the Planning Department or the Town Engineer, before the change is made. The Town Engineer shall furnish a copy of all proposed change orders to the Planning Department along with

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his/her recommendation. If the Planning Director determines that the proposed change is major and not minor, it shall be referred to the Planning Board, which may either act on it as a change order or require that an application for an amendment to the subdivision plan be submitted.

- (b) No change order shall be effective until signed by the Planning Director or voted by the Planning Board. The developer shall maintain a copy of all approved change orders at the site. All approved change orders shall be included in the as-built plans filed at the completion of the work.

D. Timing of site construction and dwelling construction.

- (1) Objectives. The issuance of various permits for dwellings and site construction shall be coordinated to achieve the following objectives:
  - (a) To maintain adequate access to the construction site and to a dwelling during its construction for fire, police and ambulance vehicles;
  - (b) To provide for the adequate provision of other public services, such as snowplowing, refuse disposal, and school buses;
  - (c) To minimize the chance of damage or disruption of the street and other municipal services after their initial installation and inspection;
  - (d) To provide a finished product to the initial purchaser and/or occupant of a dwelling that will receive municipal services equivalent to those provided in the Town generally and that facilities will not need to be corrected or repaired.
- (2) Temporary markers for bounds before construction. Prior to the construction of the street and the issuance of any building permit, including a foundation permit, temporary markers shall be set at the location of all permanent bounds and monuments within the limit-of-work line. Permanent bounds or monuments shall not be installed within the limit-of-work line until all construction that might damage or destroy them is completed. The bounds or monuments must be permanently installed before a certificate of occupancy for any dwelling may be issued.
- (3) No trenches after binder course installed. Prior to the installation of the binder course for a street, all underground services that will be placed in the right-of-way shall be installed to the right-of-way line. No trenches or other street openings shall be allowed within the right-of-way after the installation of the binder course.
- (4) Improvements required before building permit.
  - (a) No building permit, except for a foundation permit, shall be issued, except for the allowance for winter conditions as described in Subsection E, until:
    - [1] The required improvements in the right-of-way across the entire frontage of the lot have been satisfactorily completed;

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- [2] The required improvements between the lot and an existing public street to which the subdivision street will be connected have been satisfactorily completed; and
    - [3] If necessary, a paved temporary turnaround is provided. A temporary turnaround will not be necessary where the subdivision street is either a through street or is served by a permanent turnaround either of which has been satisfactorily completed.
  - (b) The following are not required to be completed at this time:
    - [1] The finish course of the paved surfaces of the street or the sidewalk, if any; and
    - [2] The street trees, seeding, or installation of turf in any grass strip or plant materials required by a landscaping plan.
  - (5) Issuance of building permit. No building permit, except for a foundation permit, shall be issued, except for the allowance for winter conditions as described in Subsection **E**, until the developer submits to the Building Commissioner:
    - (a) A copy of the release of lot issued by the Planning Board [See § **175-54G(1)**.];
    - (b) Evidence that the binder course is installed on that street, except where winter weather conditions would not allow for the installation of the binder course;
    - (c) Evidence that the location of the bounds on the street and any easement on the lot are temporarily marked if the construction is not at the point where the permanent bounds may be installed;
    - (d) If applicable, a written statement from the Town Engineer that all construction in the public way, for which a street opening permit was issued, has been completed and restored. [See § **175-45F(3)**.]
  - (6) Issuance of occupancy permit. No building may be occupied and no certificate of occupancy for a building on a lot shall be issued until the following have occurred:
    - (a) The building sewer has been connected to the Town sewer line and the water line has been connected to the Town water line, tested and approved by the Town Engineer [See § **175-47A(4)**.]; and
    - (b) Certificates of completion by a land surveyor, a civil engineer and a landscape architect [See Subsection **D(7)**.] have been filed that all the improvements described in Subsection **D(4)** necessary to serve the lot and the finish course of the street and sidewalk and all trees and landscaping have been satisfactorily completed.
  - (7) Satisfactorily completed; certificates of completion. For the purposes of this Subsection **D**, the extent to which the required improvements have been "satisfactorily completed" shall be determined in part by:

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- (a) The certificates of the registered professional engineer or landscape architect as to the construction and other improvements completed, as required by Subsection **G**, at the time of application for the building permit or certificate of occupancy; and
  - (b) The recommendation from the Town Engineer as to the improvements that have been satisfactorily completed, as provided in § **175-54E(2)**, at the time the surety was most recently established. (See § **175-54D** and **E**.)
- (8) Temporary certificate of occupancy. Where winter conditions prevail, the provisions of Subsection **D(6)** relative to occupancy of a building may be deferred and a temporary certificate of occupancy may be issued as provided in Subsection **E(2)**.

**E. Winter conditions.**

- (1) Limited building permit. Where winter weather conditions would not allow for the installation of the binder course or other required improvements, or where the proximity of winter conditions would not allow for the completion and stabilization of improvements, the Building Commissioner may issue a limited building permit, restricting the work to the foundation, framing, closing in and roofing, without the issuance of a full building permit, prior to the installation of the binder course. With this limited building permit, no work shall be allowed on insulation, or on the interior finish stage of construction, finish plumbing or finish electrical work, until the installation of the binder course.
- (2) Temporary certificate of occupancy. As an alternative to Subsection **E(1)**, where winter weather conditions would not allow for the installation of the binder course or other required improvements, or where the proximity of winter conditions would not allow for the completion and stabilization of improvements, the Planning Board may request the Building Commissioner to issue a temporary certificate of occupancy for a building provided:
  - (a) The developer provides evidence that there are special circumstances, such as, but not limited to, real estate commitments, that would create a hardship on persons who have a binding real estate commitment to purchase the building;
  - (b) Financial surety applicable to the lot on which the building is located has been provided and the Planning Board has issued a release of lot for sale as provided in § **175-54G(1)**;
  - (c) The developer establishes an escrow account with the Town Treasurer and deposits in such account at least \$10,000 in cash in addition to any financial surety already provided;
  - (d) The developer enters into a written agreement with the Planning Board in which he/she agrees to satisfactorily complete by June 15 of the next construction season all improvements that otherwise would have been required to be completed prior to the issuance of a building permit and certificate of occupancy as provided in Subsection **D(4)** through **(6)**, and to forfeit to the Town of Lexington the amount of

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\$100 per day for each day after June 15 of the next construction season that the required improvements have not been satisfactorily completed;

- (e) The temporary certificate of occupancy is not revoked and a permanent certificate of occupancy is not issued until the Planning Board votes that all conditions of this section have been satisfactorily met.

- (3) Temporary measures for snow plowing. When winter conditions will not allow for the installation of the finish paving course, no manhole, catch basin or similar utility structure shall be left projecting up in any street or sidewalk. Bituminous concrete that slopes from the top of the structure to the binder course must be laid around the structure to allow a snowplow blade to ride over it.

F. Site construction practices.

- (1) Limit-of-work line in place until completion. The limit-of-work line shall remain marked until all construction within it is completed. The line may not be relocated without the prior written approval of the Planning Board or the Planning Director.
- (2) Limit-of-work line: construction activities. All contractors and workers on the site shall be informed that no construction activity is to occur beyond the limit-of-work line. The area outside the limit-of-work line shall be protected from damage during construction and shall not be used for the storage of building or earth materials, equipment, vehicles or construction debris or as a construction staging area.
- (3) Prompt stabilization of disturbed areas; erosion control.
  - (a) As soon as possible during construction, the developer shall bring all disturbed upland areas to final finished grade and shall stabilize all slopes created as a result of cut or fill to prevent erosion by either:
    - [1] Loaming and seeding in accordance with USDA Soil Conservation Service Guidelines for permanent stabilization; or
    - [2] Stabilizing in another way approved by the Engineering Department.
  - (b) The developer shall move promptly to control any erosion problems that occur during construction by any method approved by the Engineering Department.
- (4) Disposal of debris and refuse. The developer shall dispose of all debris and construction refuse promptly and properly and shall maintain the construction site in a clean condition.

G. Certificates of completion. At various stages of construction and with applications for various approvals or actions by the Planning Board or other Town officials, the developer is required to provide certificates of the satisfactory completion of the work to date. These certificates, which shall be stamped and signed, shall be submitted:

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- (1) By the civil engineer who stamped the sheets in the definitive subdivision plan, or by such other registered professional engineer as the Board may approve instead, that the completed construction complies with the approved definitive subdivision plan, any written changes made after the approval of the plan and the Standard Specifications;
  - (2) By the registered land surveyor or registered professional engineer who stamped the sheets in the definitive subdivision plan, or by such other registered land surveyor or professional engineer as the Board may approve instead, that all required bounds, monuments or markers delineating the right-of-way of any street, or of any easement, or any walk or path, or any lot, as shown on the approved definitive subdivision plan, have been correctly located and permanently set;
  - (3) By the landscape architect who stamped the sheets in the definitive subdivision plan, or by such other landscape architect as the Board may approve instead, that the planting of all trees and other plant materials complies with the approved definitive subdivision plan, any written changes made after the approval of the plan and the Standard Specifications.

§ 175-56. Completion of subdivision.

A. Planning Board action.

- (1) Certificate of subdivision completion. After all streets in the subdivision have been constructed and all municipal services have been installed and after all the documents described in this article have been submitted, all in a satisfactory manner, the Planning Board, either in response to a written request from the developer or upon its own initiative, may certify that the subdivision is completed and release any performance guaranty that it holds.
- (2) Trees and plant materials in acceptable condition. Before the Planning Board issues a certificate of subdivision completion or releases any performance guaranty that it holds, it shall determine that all trees and other plant materials that have been planted have been in place for at least one winter season and are in acceptable condition or have been satisfactorily replaced.
- (3) Certificate is not laying out or acceptance of street. The Planning Board's issuance of a certificate of subdivision completion and the release of any performance guaranty that it holds does not constitute the laying out, or acceptance, by the Town of Lexington of any street, walk or path within the subdivision.

B. Release of performance guaranty: procedures.

- (1) Written request by developer. After all streets in the subdivision have been constructed and all municipal services have been installed, the developer may submit a written request for a final release of any performance guaranty that the Board holds, including any financial surety, and that it be returned to the developer. The request shall be sent by registered mail or hand delivered to both the Town Clerk and to the Planning Board.

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- (2) Documents to accompany developer's request. The request for the final release of performance guaranty shall be accompanied, or preceded, by:
- (a) A set of as-built plans, showing an updated version of the plans contained in the approved subdivision plan, submitted in ink on Mylar, that shows the street and municipal facilities as constructed in the field, and including all major changes approved by the Planning Board and all minor changes approved by the Planning Director and the Town Engineer;
  - (b) A certificate of completion [See § 175-55G(1).] by the civil engineer that the completed construction of the street(s) and municipal services complies with the approved definitive subdivision plan, any written changes made after the approval of the plan and the Standard Specifications.
  - (c) A certificate of completion [See § 175-55G(2).] by the registered land surveyor or registered professional engineer that all required bounds, monuments or markers delineating the right-of-way of any way, or of any easement, or any lot, as shown on the approved definitive subdivision plan, have been correctly located and permanently set;
  - (d) A certificate of completion [See § 175-55G(3).] by the landscape architect that the planting of all trees and other plant materials complies with the approved definitive subdivision plan, any written changes made after the approval of the plan and the Standard Specifications;
  - (e) If the street(s) and municipal services are proposed to be accepted by the Town:
    - [1] A street acceptance plan, separate from the as-built plans, according to the Engineering Department's standards for filing at the Registry of Deeds;
    - [2] An instrument transferring to the Town of Lexington valid, unencumbered title to all sanitary sewers, storm drains, water mains, watercourses, banks and holding ponds, and all appurtenances thereto, constructed in the subdivision and conveying to the Town of Lexington, without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate and maintain such facilities;
    - [3] A document providing for the developer's responsibility for maintenance of the street(s) and municipal services until they are accepted by the Town;
  - (f) If the street and municipal services are not proposed to be accepted by the Town:
    - [1] A copy of the deed or other document to all property owners in the subdivision acknowledging that the street(s) and municipal services will not be accepted by the Town along with a plan for the permanent maintenance of those facilities;

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- [2] If some, but not all, municipal facilities and services are proposed to be accepted by the Town, an instrument granting perpetual rights and easements to the Town of Lexington to construct, inspect, repair, renew, replace, operate and maintain those facilities and services;
- (g) If the Board so requires, a written statement obtained by the developer from the Town's Revenue Officer that all outstanding obligations to the Town of Lexington, such as, but not limited to, fines or other charges, or real estate taxes, have been paid.
- (3) Request for final release complete on submission. All of the applicable documentation cited in Subsection **B(2)(a)** through **(g)** shall be submitted on or before the date on which the written request for final release of the performance guaranty is received so that the Planning Board and applicable Town departments shall have the 45 days described in the Subdivision Control Law to review it and check that all work covered by the performance guaranty has been completed correctly. Failure to submit the required documentation shall be grounds for the disapproval of the request for the release of the performance guaranty.
- (4) Recommendation from Town Engineer. Upon the receipt of the request for final release of the performance guaranty, the Board will request that the Town Engineer verify the satisfactory completion of all work in the subdivision and recommend whether the performance guaranty should be released.
- (5) Action within 45 days; allowance for winter conditions. Within 45 days of the receipt of the written request for final release of the performance guaranty and of all the documentation required by Subsection **B(2)**, the Planning Board will either approve the work and release the performance guaranty or disapprove the request. When the expiration of the forty-five-day period would occur between December 1 and May 1, the Planning Board may defer action on the request for final release to allow it to make the determination, required by Subsection **A(2)**, that the street(s) and municipal services and facilities have withstood the winter season satisfactorily or have been repaired or replaced.
- (6) Actions if request approved. If the Planning Board approves the request for final release of performance guaranty, within 45 days of receipt of the developer's request, it will:
- (a) Issue a release of surety if any is held, sending a copy of the release to the Town Clerk, the Town Treasurer, and, by registered mail, to the developer and to the financial institution holding the surety; and
- (b) Issue a certificate of subdivision completion that will include a release of the covenant.
- (7) Actions if request disapproved. If the Planning Board disapproves the request for final release of performance guaranty it shall, within 45 days of receipt of the developer's request: notify the Town Clerk, and notify the developer by registered mail, stating the reasons why the work, or the

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request, fails to comply with the definitive subdivision plan and with these Regulations.

- (8) Planning Board failure to act. If the Planning Board fails to notify the Town Clerk and the applicant within 45 days of receipt of a written request for final release and of all the documentation required by Subsection **B(2)** as described above, any surety held shall be returned and any covenant shall become void. In the event that the forty-five-day period expires without action by the Planning Board, the Town Clerk shall issue a certificate that the subdivision is considered to be completed and any performance guaranty, including any financial surety, is released.
- (9) Escrow funds for landscaping. With the final release of any performance guaranty, the Board may require that funds be placed in a separate escrow account with the Town, in a form acceptable to the Town Manager, until the following growing season to assure the replacement of any damaged or dead trees or other plant materials that would have otherwise been included in the surety.

C. Developer's responsibilities after final release.

- (1) Developer retains title. If the street(s) and municipal services are to be accepted by the Town, the developer shall retain title to the fee of each street, walk or path or easement in the subdivision until conveyed to the Town and accepted by it.
- (2) Developer has maintenance responsibility. The issuance by the Planning Board of a certificate of subdivision completion or a release of surety shall not be construed to relieve the developer, and his successors in title, of responsibility to thereafter maintain all streets, walks or paths and municipal services in a satisfactory condition until they are accepted by the Town or until such responsibility is assumed by the property owners in the subdivision.

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## Article X. CHANGES TO APPROVED DEFINITIVE SUBDIVISION

### § 175-57. General conditions.

- A. Authority to change. The Planning Board, on its own initiative, or on receipt of an application by any interested person, may change, modify, amend or rescind its previous approval of a definitive subdivision plan or of any of the terms and conditions set forth in its certificate of action approving the subdivision plan.
- B. Meaning of modification or change. For the purposes of this section, the term "modification," as used in MGL c. 41, § 81O, the Subdivision Control Law, shall mean those changes, as described in these Regulations, that do not include amendment or rescission.
- C. Difference between change and amendment.
  - (1) A "change" is a modification in the construction of the streets and installation of municipal services or other construction features of the approved subdivision plan that would not require a revision of the information presented on those sheets in the approved definitive subdivision plan which are required to be recorded by § 175-53A. A change, as approved on a written change order, may deal with those construction details and the proposed development of the site in general which are shown on those sheets in the approved definitive subdivision plan that are not required to be recorded by § 175-53A or of the special conditions contained in the certificate of action by which the Planning Board has approved the subdivision plan.
  - (2) An "amendment" to the approved subdivision plan will be required for a change that would require a revision of the information presented on those sheets in the approved definitive subdivision plan that are required to be recorded by § 175-53A or of the special conditions contained in the certificate of action by which the Planning Board has approved the subdivision plan.
- D. Amendment required for location and width of ways. As provided in MGL c. 41, § 81O, the Subdivision Control Law, the location and width of ways shall not be changed after the Planning Board has approved the plan except by an amendment approved by the Planning Board.
- E. Change, amendment or rescission may not affect lots sold or mortgaged. No change, amendment or rescission of an approved definitive subdivision plan shall affect those lots in the subdivision that have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant to the lots, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, for such land. However, the Planning Board may change, amend, or rescind an approved definitive subdivision plan without the consent of the lot owners and mortgagors if:
  - (1) The Planning Board determines that the proposed change, amendment, or rescission does not affect any such lots or rights appurtenant to the lots;  
or

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- (2) There has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the Planning Board.

§ 175-58. Amendment to the approved plan.

- A. Procedure for amendment similar to original submission. Where the Planning Board determines that a change requires an amendment to the approved subdivision plan, the procedure for the filing of the proposed amendment, the provision of notice to interested parties, holding a public hearing, and filing a decision shall be essentially the same as those required for the original submission of the proposed subdivision plan as provided in Article VI of this Part 2.
- B. Planning Director may waive inclusion of some information. If an applicant submits a written request prior to the submission of the proposed amendment, the Planning Director is authorized to waive the inclusion of the information which would otherwise be required for an original submission but is not necessary for review of the proposed amendment provided the information submitted includes the information necessary for the Planning Board to either approve or disapprove the proposed amendment.
- C. Planning Board decision. The Planning Board shall evaluate the proposed amendment in accordance with the approval criteria set out in § 175-34B(2) of this Part 2 and may approve, approve with conditions, or deny the proposed amendment giving the basis for the denial in accordance with Article VI. The sheets showing the proposed changes and the Planning Board's decision shall note the book and page reference of the original approved subdivision plan.
- D. Partially completed subdivision. Any plan showing a revision of an approved subdivision plan in which some, but not all, of the lots have been released or some, but not all, of the lots are still subject to a covenant as the form of performance guaranty shall have a note referring to the original subdivision plan and shall show on a plan which lots are affected by the proposed amendment and which are not. The Planning Board may require that an amendment to the plan include corresponding changes in the performance guaranty, such as, but not limited to, the revision of the covenant or a change in the amount or the term of the surety.

§ 175-59. Rescission of previously approved subdivision plan.

- A. Where rescission is authorized. The Planning Board, on its own initiative, or on receipt of an application by any interested person, may rescind its previous approval of a definitive subdivision plan in the following cases:
- (1) As provided in § 175-52H, the Board shall rescind its approval if the conditions set forth in the Planning Board's certificate of action are not satisfied within six months from the date of the certificate's filing.
- (2) As provided in § 175-51B(1), the Board has grounds to rescind its approval if the construction of all streets and the installation of all municipal services have not been completed within two years from the date the approved plan is recorded at the Registry of Deeds and if an extension of time, as provided in § 175-51B(2) has not been granted.

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- (3) As provided in § **175-51C(3)**, the Board may rescind its approval if, after the Board has issued a stop-work order, the developer persists in construction of the subdivision in a way that is not in compliance with the approved plans or the conditions cited in the stop-work order are not corrected within one year of the date the stop-work order was issued.
    - (4) If the Planning Board determines that the request of the developer or other interested person is in the public interest.
  - B. Rescission of constructive approval plan. The Planning Board, on its own initiative, or on receipt of an application by any interested person, may rescind a definitive subdivision plan which is deemed to be approved by the failure of the Planning Board to take final action or to file a certificate of its action with the Town Clerk within 90 days of the filing of a definitive subdivision plan which is considered to be complete, provided such plan does not comply with the requirements of the Subdivision Regulations.
  - C. Procedures for rescission. Whether the Planning Board considers its own initiative or an application for rescission of a previously approved definitive subdivision plan, the procedure for the filing of the proposed rescission, the payment of a fee, the provision of notice to interested parties, holding a public hearing, and filing a decision shall be essentially the same as those required for the original submission of the proposed subdivision plan, or an amendment to a previously approved subdivision plan, as provided in Article VI of the Subdivision Rules and Regulations. The decision to rescind a plan shall be filed with the Town Clerk, with notice to the developer and other parties in interest, and recorded at the Registry of Deeds in essentially the same manner as an original submission or an amendment to a previously approved subdivision plan.



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## Article XI. SPECIAL PERMITS

### § 175-60. Planning Board as SPGA; authority.

- A. The Lexington Zoning Bylaw authorizes the Planning Board to act as the special permit granting authority (SPGA) for the granting of certain special permits. These Regulations are adopted in accordance with the Zoning Act, MGL c. 40A, § 9. These Regulations supplement the provisions of the Lexington Zoning Bylaw.
- B. Provisions of Zoning Bylaw shall be specified. A person applying for a special permit shall cite the specific section of the Zoning Bylaw and the action which the Planning Board is requested to take and shall include information on the conditions, standards and criteria sufficient for it to make the finding and determination required by the Zoning Bylaw. In the event a person seeks a special permit under more than one provision of the Zoning Bylaw as part of one building or site development proposal, he/she shall file an application that clearly identifies each provision of the Zoning Bylaw for which such special permit is sought.

### § 175-61. Objectives; sequence of review.

- A. Objectives. The objectives for the review of applications seeking approval of a special permit are set forth in § 175-8 and are incorporated by reference here.
- B. Sequence of review. The Planning Board recommends that a person seeking approval of a special permit follow the sequence set forth below:
  - (1) Sketch plan (recommended, not required): An initial and informal way to determine the alternatives that the Planning Board may find acceptable.
  - (2) Preliminary site development plan (recommended, not required): Permits a dialogue on design issues and a determination of the acceptable and desirable features of the development prior to the preparation of a definitive site development plan.
  - (3) Definitive site development plan (required): Includes construction details and other detailed information necessary to comply with the Zoning Bylaw and to carry out the design agreed to in the preliminary site development plan stage.
  - (4) Issuance of decision on the application for a special permit: The vote of the Planning Board to grant, grant with conditions, or deny the planned residential development. The filing of the decision with the Town Clerk completes the application and review process.
- C. Concurrent, separate applications. Where applicable, an applicant seeking approval of a special permit is encouraged, but not required, to apply concurrently with an application for approval of a subdivision plan. The SPGA may issue notice, conduct a hearing and issue a decision in a concurrent manner that does not require a separate application, notice, hearing and decision on each such special permit, provided that it clearly identifies the separate provisions of the bylaw for which each special permit is sought or granted.

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§ 175-62. Application; types of plans; information required.

- A. Application form. A concurrent application for the zoning approval of a planned residential development shall be submitted by completing the appropriate zoning entries on Form B. (See Appendix.)
- B. Format of plan and documents; information required. The format and the information required for any of the plans or other documents cited in this section are set forth in §§ **175-10** and **175-11** and are incorporated by reference here. This section may require some modification of the format of plans or other documents and of the information required, as noted in the provisions dealing with the various plans.

§ 175-63. Application and review procedures.

- A. Same procedures as Zoning Bylaw and Part 1, Article II of this chapter. The procedures for the review of, and decisions on, applications for approval of a site development plan are set forth in § **135-9.4** of the Zoning Bylaw and in Part 1, Article II of this chapter and are incorporated by reference here. See the following:
  - (1) § **175-11G**, Major and minor revisions to plans.
  - (2) § **175-12**, Filing and acceptance of application.
  - (3) § **175-13**, Review of applications.
  - (4) § **175-14**, Decision.
- B. Planning Director's authority. The Planning Director is authorized to act in behalf of the SPGA in its authority:
  - (1) to waive the submission of certain information or plans;
  - (2) to determine if an application is complete; and
  - (3) to notify other Town boards and departments of receipt of an application.
- C. Fee required. An applicant submitting a sketch plan, a preliminary site development plan or a definitive site development plan concurrently with an application for approval of a sketch plan (for a subdivision), a preliminary subdivision plan or a definitive subdivision plan shall not pay any fee in addition to that set forth in § **175-12D(7)** for the corresponding subdivision plan. An applicant who submits a sketch plan, a preliminary site development plan or a definitive site development plan separate from an application for approval of a corresponding subdivision plan shall pay the fee set forth in § **175-12D(7)** in addition to that paid for the corresponding subdivision plan.
- D. Time for decision. The time periods for decisions are set forth in § **175-13**.

§ 175-64. Accessory Apartments

When a special permit is needed for an accessory apartment it shall be accompanied by:

- A. Floor plan, drawn to scale, of the dwelling to be created and the structure where it is to be located;

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- B. Where exterior changes are proposed, an elevation, or other visual representation, of the facade to be changed sufficient to show the architectural character of the dwelling;
  - C. An off-street parking plan; and
  - D. Such further plans and other documentation related to the conditions and requirements of the Zoning Bylaw § 135-6.7 as the SPGA may require.

§ 175-65. Reserved

§ 175-66. Interpretation of forms and charts.

- A. Forms. The Appendix<sup>4</sup> contains sample forms for the administration of these Regulations. These forms are not part of the Regulations. Forms may be added or deleted and the content of the forms may be revised from time to time by administrative action of the Planning Board; such changes are not amendments to these Regulations and may be made without holding a public hearing.

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<sup>4</sup> Editor's Note: The Appendix material is on file at the office of the Planning Department.



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## Article XII. UNACCEPTED STREETS

### § 175-67. Unaccepted streets on the Zoning Map.

#### A. Authority.

- (1) § 135-2.3.1 of the Zoning Bylaw provides the Planning Board shall prepare the Official Zoning Map of the Town of Lexington.
- (2) § 135-4.2.4 of the Zoning Bylaw provides that every lot shall have a minimum frontage on a street, as defined in the Zoning Bylaw. In Article II of the Zoning Bylaw, "street, road or way" is defined as:
  - (a) An area of land dedicated, approved by the Planning Board, or legally open for public travel under at least one of the following classifications:
    - [1] A public way duly laid out by the Town of Lexington, the Middlesex County Commissioners, or the Commonwealth of Massachusetts, or a way which the Lexington Town Clerk certifies is maintained by public authority and used as a public way; or
    - [2] A way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law and constructed in accordance with such plan; or
    - [3] A way in existence on April 4, 1948, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.
  - (b) A public or private way as aforesaid shall not be deemed to be a "street" as to any lot of land that does not have rights of access to and passage over said way.

#### B. Supplementary lists.

- (1) In addition to the unaccepted streets shown on the Zoning Map, the Planning Board maintains a list, "Unaccepted Streets that Appear on the Zoning Map," that shows the exact length of the unaccepted street, or section of unaccepted street, that meet the criteria to appear on the Zoning Map. That list may be revised from time to time by vote of the Planning Board as unaccepted streets are accepted as public streets or as new information affecting the status of an unaccepted street is available.
- (2) The Planning Board also maintains a list, "Non Streets that Do Not Appear on the Zoning Map," that shows the length of other unaccepted streets, or sections of unaccepted streets, rights-of-way, drives and roads that do not meet the criteria to appear on the Zoning Map. That list may be revised from time to time by vote of the Planning Board as new information about such unaccepted streets, rights-of-way, drives and roads is available.

#### C. Criteria for unaccepted street to appear on the Zoning Map.

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- (1) These Regulations set forth the criteria for unaccepted streets to appear on the Zoning Map and are organized by dividing Subsection A(3) of the definition of "street, road or way" in the Zoning Bylaw<sup>5</sup> into its several components. The definition is repeated, with the components identified:
    - (a) A way in existence on April 4, 1948, having, in the opinion of the Planning Board,
    - (b) Sufficient width,
    - (c) Suitable grades, and
    - (d) Adequate construction
    - (e) To provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for
    - (f) The installation of municipal services to serve such land and the buildings erected or to be erected thereon.
  - (2) In existence on April 4, 1948.
    - (a) The street must have existed on the ground within the layout shown on a plan recorded in the Registry of Deeds prior to April 4, 1948. The street must currently exist in the field and meet the minimum standards set forth in Subsection **C(3)** through **(7)** below. As proof of its existence, the street must be able to be driven over by an automobile, an emergency vehicle (such as an ambulance or piece of fire apparatus) and a truck providing municipal services (such as refuse collection).
    - (b) The street must have been in existence as a traveled way open to the public continually since April 4, 1948. Acceptable evidence of its continual existence will be:
      - [1] The Town's photogrammetric maps (1971 and 1987);
      - [2] Aerial photographs whose dates can be determined;
      - [3] Town of Lexington Zoning Maps, published since 1980; or
      - [4] Other documentation acceptable to the Planning Board.
    - (c) A section of a street that may have existed on the ground on April 4, 1948, that subsequently has deteriorated or has become overgrown to such an extent that it is not passable by the types of vehicles mentioned above shall be considered abandoned and shall be treated as a non street.
  - (3) Sufficient width. The right-of-way shall be at least 40 feet wide. The traveled way shall be at least 16 feet wide so that two of the vehicles cited in Subsection **C(2)** could pass each other going in opposite directions.
  - (4) Suitable grade. The maximum grade permitted is 10%.

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<sup>5</sup> Editor's Note: See § **135-10**.

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- (5) Adequate construction. There must be an adequate gravel base, as determined by the Town Engineer, over a subbase of suitable material acceptable to the Town Engineer and other than loam, peat or clay.
  - (6) Needs of vehicular traffic. To serve the proposed land uses, the street shall be capable of accommodating vehicles, including but not limited to fire-fighting apparatus, refuse disposal trucks, school buses, the Town's public works equipment, and oversized private vehicles such as delivery trucks or moving vans. Two such vehicles shall be able to pass in opposite directions.
  - (7) Adequate municipal services. The street shall currently have or, as determined by the Planning Board, be capable of having installed, a turnaround (for the end of the unaccepted street only), sidewalks (or a gravel base for a future paved sidewalk), sanitary sewer, water supply, fire hydrants, storm drainage, grass plot, street trees, and, as applicable, streetlights and underground utility (electric, telephone, and cable television) lines.
- D. Non streets that do not appear on the Zoning Map. A street that does not meet each of the criteria in Subsection C is considered, for zoning purposes and for the purposes of these Regulations, to be a non street. The list "Non Streets that Do Not Appear on the Zoning Map" includes the following:
- (1) A paper right-of-way, also called a "paper street," that appears only on a map or plan and does not exist in the field;
  - (2) A driveway that is entirely on a lot and does not appear within a defined right-of-way recorded prior to 1948. Even though a road appears to serve only one lot, if it is within a right-of-way, it is not a driveway;
  - (3) A condominium drive, or access drive in a multifamily condominium complex, generally is not within a right-of-way recorded prior to 1948 or was not approved under the Subdivision Control Law;
  - (4) A road or path that might be traversable by some vehicles, such as an all-terrain vehicle, but, due to insufficient width, poor conditions, or steep grade does not permit:
    - (a) Automobiles or public service vehicles to drive over it without potential damage to the vehicle; or
    - (b) Two such vehicles to pass each other in opposite directions.

§ 175-68. Standards for grade and construction of unaccepted streets relative to new dwellings.

A. Authority; applicability.

- (1) Authority. § 135-4.2.4 of the Zoning Bylaw provides that every lot shall have a minimum frontage on a street, as defined in the Zoning Bylaw. Prior to the issuance of a building permit for: a new dwelling on a vacant lot, a new dwelling replacing an existing dwelling, or the reconstruction of an existing dwelling that is demolished to the extent of 50% or more of its replacement cost, as determined by the Building Commissioner or designee [See also Subsection A(3) below.], on an unaccepted street in

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existence prior to April 1, 1948, the Zoning Bylaw, as set forth in Article II of the Zoning Bylaw, in the definition of "street, road or way," requires that the Planning Board determine that the street has: "...sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon." These Regulations set forth the procedures and construction standards by which the Planning Board will make that determination.

- (2) Planning Board determination of applicability. As a result of applying the standards contained in these Regulations, the Planning Board will determine that:
  - (a) The unaccepted street presently is of adequate grade and construction;
  - (b) The unaccepted street is not presently of adequate grade and construction but will be of adequate grade and construction if certain improvements, proposed by the applicant, are made by which the unaccepted street will comply with the standards in these Regulations; or
  - (c) The unaccepted street is not of adequate grade and construction and the improvements proposed by the applicant are not sufficient to change that determination.
- (3) Not applicable to existing dwelling. These Regulations do not apply to building permits issued for the repair, addition to, or reconstruction of an existing dwelling provided it is not demolished to the extent of 50% or more of its replacement cost, as determined by the Building Commissioner or designee.
- (4) More than one new dwelling. These Regulations apply to an individual dwelling on an individual lot on an existing unaccepted street. Construction of new dwellings on more than one lot on a segment of an unaccepted street is not permitted under these Regulations if any adjacent or abutting lot(s) was owned by the same person, or one or more principals in a development entity, in any of the five years preceding the application, and a building permit was issued for a new dwelling on that lot. In that case, the applicant shall file a definitive subdivision plan and shall provide for the construction of public facilities as required by the Subdivision Regulations.

B. Objectives; sequence of review.

- (1) Objectives. The Planning Board has adopted these Regulations for the following reasons:
  - (a) To provide for the improvement of segments of unaccepted streets in a Town that has a large number of existing unaccepted streets that need to be improved;

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- (b) To provide equivalent requirements, facilities and costs to builders and purchasers of new dwellings on streets in new subdivisions and on lots on an unaccepted street;
  - (c) To allocate the cost of improved public facilities on users who receive direct benefit from the cost rather than having that cost passed on to all taxpayers in the Town;
  - (d) To reduce operating costs in the provision of municipal services to residents living on unaccepted streets;
  - (e) To extend the system of streets that are either accepted public ways or are constructed to Town standards;
  - (f) To improve access to public lands and facilities;
  - (g) To set forth written standards and procedures for the improvement of unaccepted streets in relation to the construction of new dwellings.
- (2) Sequence of review. The Planning Board recommends that a person seeking a determination of the adequacy of construction of an unaccepted street follow the sequence set forth below:
- (a) Preliminary street construction plan (recommended, not required). A dialogue on design issues and a determination of the acceptable and desirable features of the street construction plan to the preparation of a definitive site development plan.
  - (b) Definitive street construction plan (required). Includes construction details and other detailed information necessary to comply with these Regulations and to carry out the design agreed to in the preliminary site development plan stage.
  - (c) Issuance of decision on the application for determination of the adequacy of construction of an unaccepted street. Vote of the Planning Board to determine the adequacy, or determine the adequacy with conditions, or determine the street is not of adequate grade and construction.

C. Application; types of plans; information required.

- (1) Format of plan and documents; information required. The format and the information required for any of the plans or other documents cited in this section is set forth in § 175-10, Format and custody of plans and documents, in Part 1, Article II of this chapter and are incorporated by reference here.
- (2) Preliminary street construction plan.
  - (a) Submission of a preliminary street construction plan is not required but is recommended.
  - (b) Alternative concepts. If the applicant seeks waivers from these Regulations, the Planning Board recommends that an applicant submit one plan showing full compliance with the design standards set forth in Subsection E and at least one alternative showing the effect of waivers from those standards that the applicant may propose.

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- (c) Information required. The information shown in a preliminary street construction plan shall be for the length of the unaccepted street to be improved (See Subsection E.) plus any intervening distance to a nearby public street. The information required in a preliminary street construction plan is the same as that required by § 175-11A for the plans indicated with the following exceptions and modifications:
- [1] A locus-context map, including the items listed in § 175-11A(2), except that only land within 100 feet of the right-of-way of the length of the unaccepted street to be improved (See Subsection E.) needs to be shown; may be based on existing map resources; not required: § 175-11A(2)(a)[6], zoning district boundaries, and [7], recorded easements abutting the tract;
  - [2] A site construction plan, except the following items listed in § 175-11A(4) are not required: Subsection A(4)(e), the location and characteristics of open space, and (h), a proposed limit-of-work line;
  - [3] A street layout plan and a street profile plan, including the items listed in § 175-11A(5) in general but sufficient to show compliance with the design standards in Subsection E;
  - [4] A utilities plan, including the items listed in § 175-11A(6) in general but sufficient to show compliance with the design standards in Subsection E;
  - [5] A landscape plan, except for the following modifications to the items listed in § 175-11A(7): Subsection A(7)(c), a general description of proposed landscaping can be provided rather than a detailed enumeration of plant materials; Subsection A(7)(d), a general description of proposed street furniture can be provided rather than an detailed description; not required: Subsection A(7)(b), existing and proposed building footprints, etc.
  - [6] A certified copy of a plan properly recorded prior to April 4, 1948, showing the layout of the unaccepted street;
  - [7] Evidence that the street has been in existence continually since April 4, 1948;
  - [8] An opinion of an attorney that the applicant has the legal right to make the improvements proposed to comply with these standards;
  - [9] A list identifying all waivers, if any, from these standards and the reasons the waiver is requested;
  - [10] A statement whether the applicant intends to petition to have the street accepted by the Town as a public street.
  - [11] Not required: a site analysis map [See § 175-11A(1).], a property rights and dimensional standards plan [See § 175-11A(3).], and a proof plan. [See § 175-11A(8).]

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- (3) Definitive street construction plan.
- (a) Definitive street construction plan required. Submission of a definitive street construction plan is required.
  - (b) Alternative concepts. If the applicant has not submitted a preliminary street construction plan, and if the applicant seeks waivers from these Regulations, the Planning Board recommends that an applicant submit one plan showing full compliance with the design standards set forth in Subsection **E** and at least one alternative showing the effect of waivers from those standards that the applicant may propose.
  - (c) Information required. The information shown in a definitive street construction plan shall be for the length of the unaccepted street to be improved (See Subsection **E**.) plus any intervening distance to a nearby public street. The information required in a definitive street construction plan is the same as that required by § **175-11A** for the plans indicated with the following exceptions and modifications:
    - [1] A locus-context map, including the items listed in § **175-11A(2)**, except that only land within 100 feet of the right-of-way of the length of the unaccepted street to be improved (See Subsection **E**.) needs to be shown; may be based on existing map resources; not required: § **175-11A(2)(a)[6]**, zoning district boundaries, and [7], recorded easements abutting the tract;
    - [2] A site construction plan, except the following items listed in § **175-11A(4)** are not required: Subsection A(4)(e), the location and characteristics of open space, and (h), a proposed limit-of-work line;
    - [3] A street layout plan and a street profile plan, including the items listed in § **175-11A(5)**;
    - [4] A utilities plan, including the items listed in § **175-11A(6)**;
    - [5] A landscape plan, except the following items listed in § **175-11A(7)** are not required: Subsection A(7)(b), existing and proposed building footprints, etc.;
    - [6] A certified copy of a plan properly recorded prior to April 4, 1948, showing the layout of the unaccepted street;
    - [7] Evidence that the street has been in existence continually since April 4, 1948;
    - [8] An opinion of an attorney stating he/she has examined the deeds of the owner of the lot and of all others who have rights in the right-of-way of the unaccepted street, and that the applicant has the legal right to make the improvements proposed to comply with these standards, including the construction of drainage facilities and subsurface improvements, and improvements to any intervening distance. The Planning Board may require submittal of copies of the deeds of other property owners or a representative sample of those deeds, if they are similar, with

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respect to the rights held by the (other) property owners in the right-of-way;

- [9] A list identifying all waivers, if any, from these standards and the reasons the waiver is requested; and
- [10] A statement whether the applicant intends to petition to have the street accepted by the Town as a public street.
- [11] Not required: a site analysis map [See § 175-11A(1).], a property rights and dimensional standards plan [See § 175-11A(3).], and a proof plan.[See § 175-11A(8)]

D. Application and review procedures.

- (1) Same procedures as Part 1, Article II of this chapter.
  - (a) The procedures for the review of, and decisions on, a determination of the adequacy of construction of an unaccepted street are set forth in Part 1, Article II of this chapter and are incorporated by reference here. See the following subsections of Part 1, Article II of this chapter:
    - [1] §175-11, Types of plans; information required.
    - [2] §175-11G, Major and minor revisions to plans.
    - [3] §175-12, Filing and acceptance of application.
    - [4] §175-13, Review of applications.
    - [5] §175-14, Decision.
  - (b) A copy of the application and plans do not have to be filed with the Town Clerk.
- (2) Fee required. An applicant submitting a preliminary street construction plan or a definitive street construction plan shall pay the fee set forth in § 175-12D(7).
- (3) Review by Town departments. Prior to rendering an opinion, the Planning Board will request recommendations from the Town Engineer and such other departments, boards or committees as the circumstances warrant.
- (4) Decision.
  - (a) The Planning Board will determine:
    - [1] The unaccepted street presently is of adequate grade and construction;
    - [2] The unaccepted street is not presently of adequate grade and construction but will be of adequate grade and construction if certain improvements, proposed by the applicant, are made by which the unaccepted street will comply with the standards in these Regulations; or
    - [3] The unaccepted street is not of adequate grade and construction and the improvements proposed by the applicant are not sufficient to change that determination.

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- (b) The Planning Board's determination will be made based on the conditions as they exist at the time the opinion is requested.
  - (c) Determinations are limited to the grade and construction of the street and should not be interpreted as implying that the lot under construction meets other tests of the Zoning Bylaw to qualify it as a buildable lot.
  - (d) In the event that the Planning Board's decision is based on proposed improvements to an intervening distance {see Subsection E(1)(a)[3]} and the improvements to the intervening distance are made with gravel or are of the "maintenance" type and do not involve paving, the determination will be limited to a period of two years from the date the determination was voted by the Planning Board.
- (5) Time for decision. The Planning Board will act on an application for approval of a preliminary street construction plan or a definitive street construction plan within 30 or 45 days, respectively, as provided in § **175-13A(1)**, of the date the application is determined to be complete as set forth in § **175-12C**.
- (6) Decision mailed to applicant. The Planning Board will make a written decision that will be mailed to the applicant and furnished to the Building Commissioner if an application for a building permit has been filed. The decision on an application will not be filed with the Town Clerk.

E. Design standards.

- (1) Length of unaccepted street to be improved.
  - (a) Length and direction. Improvements shall be made across the entire frontage of the lot but not less than 125 feet in the RS or RT Zoning District and not less than 150 feet in the RO Zoning District measured as indicated below:
    - [1] Across the frontage line of the lot in the direction of the nearest: public street, street laid out under the Subdivision Control Law, or unaccepted street that is paved and in a condition comparable to that of a public street, provided such street is determined by the Planning Board to be most likely future extension of the public street system;
    - [2] If the furthest point on the frontage line of the lot is less than 125 feet in the RS or RT Zoning District or less than 150 feet in the RO Zoning District from the nearest street as described in Subsection **E(1)(a)[1]** above, then the improvements shall be constructed beginning at such street and extending past the lot for a total distance of at least 125, or 150, feet from the point of beginning at the nearest street;
    - [3] If the nearest point on the frontage line of the lot is substantially more than 125, or 150, feet from the nearest street as described in Subsection **E(1)(a)[1]** above, then the improvements shall be constructed beginning at the furthest point on the frontage line of the lot for which the building permit is requested and

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continued in the direction of the nearest street described in Subsection **E(1)(a)[1]** above for a total distance of at least at least 125, or 150, feet from the point of beginning on the lot. If the intervening distance between the improvements and the nearest street described in Subsection **E(1)(a)[1]** above is a dirt road or if the traveled way is less than 20 feet wide, that intervening distance shall be widened so that the traveled way is at least 20 feet and shall be upgraded with high quality maintenance-type improvements, e.g. reconstruction of deficient roadway and drainage conditions.

- (b) Intervening distance in poor condition. If the intervening distance between the lot and the nearest street, as described in Subsection **E(1)(a)[1]** above, is in such poor condition that it cannot meet a minimum standard of passability, the Board may determine that the street is not of adequate grade and construction.
  - (c) Measurement. If the nearest street is an intersecting street, the distance between the lot and the nearest street shall be measured from the center line of the intersecting street. In the case where the unaccepted street is:
    - [1] The extension of a public street, it shall be measured from the end of the accepted section of that street; or
    - [2] The extension of a street laid out under the Subdivision Control Law, it shall be measured from the end of the paved section of the street.
  - (d) Acceptance as a public street. If the furthest point on the frontage line of the lot is less than 125 feet in the RS or RT Zoning District and less than 150 feet in the RO Zoning District from a public street, the Planning Board recommends that the street be constructed to the standards for a public street and that a petition be submitted to the Board of Selectmen for acceptance of the street by the Town.
- (2) Design standards.
- (a) Same design standards as Subdivision Regulations. The improvements required and the design standards for the improvement of an unaccepted street are essentially the same as those set forth in Article VIII, Required Improvements; Design Standards, of Part 2 of this chapter and are incorporated by reference here with the exceptions and modifications noted below.
  - (b) Exceptions to Subdivision Regulations design standards. The following provisions of Article VIII, Required Improvements; Design Standards, of Part 2 of this chapter shall not apply to the design standards for the improvement of an unaccepted street:
    - [1] §175-44D(2), Reimbursement for extra construction.
    - [2] Section §175-44D(4), Notification of Town Engineer.
    - [3] §175-44D(5), Inspection by Town Engineer.

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- [4] §175-45B(1), Connection to public street.
  - [5] §175-45C, Extension to adjoining land.
  - [6] §175-45D(3), Street names.
  - [7] §175-45D(4), Street name signs.
  - [8] §175-45F(1), Notice to Town Engineer.
  - [9] §175-50, Reservation of land for public purposes.
- (c) Design standards for unaccepted streets. The design standards for unaccepted streets shall be the same as those in the chart in § 175-45E(1) based on the number of dwelling units served on the unaccepted street and with the following exceptions:
- [1] The minimum right-of-way width for a local street may be 40 feet;
  - [2] The minimum pavement width for a local street may be 20 feet if the pavement width of the nearest street to which it connects is 20 feet or less; and
  - [3] The maximum grade may be 10%.
- (3) Storm drainage. Depending on specific site conditions and the presence or absence of storm drains nearby, catch basins and storm drains may be required. In all cases, appropriate provision for water runoff shall be made so that it leads into a drainage system, no water will be directed onto any abutting property, and no erosion will result from water that drains from the unaccepted street.
- (4) Improvements tapered back. Where necessary, newly constructed segments of unaccepted street shall be tapered back to provide a safe transition to the cross section of the existing unaccepted street.
- (5) Waivers. These standards are guidelines for typical cases. The Planning Board may waive the standards in individual cases after its site inspection and/or consultation with the Town Engineer.
- F. Construction and inspection.
- (1) Reference to implementation and construction provisions of Subdivision Regulations. The procedures for the construction and inspection of an unaccepted street are similar to the provisions set forth in Article IX, Implementation and Construction of Approved Definitive Subdivision Plan, of Part 2 of this chapter and are incorporated by reference here.
- (a) §175-51A, Compliance with plan, regulations and specifications.
  - (b) §175-51C, Construction not in compliance; stop-work order.
  - (c) §175-55A(6), Hours of construction.
  - (d) §175-55B(5), Street opening permit.
  - (e) §175-55C(5), Trees and plants: timing of installation; maintained in healthy condition.
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- (f) §175-55C(6), Changes during construction.
  - (g) §175-55F, Site construction practices.
- (2) Timing of street construction and dwelling construction. The improvement of an unaccepted street shall follow the procedures set forth in § 175-55D, Timing of site construction and dwelling construction, of Part 2 of this chapter, which are incorporated by reference here, with the exceptions and modifications noted below. An unaccepted street is not considered to be of adequate grade and construction until the municipal services necessary to serve the lot have been satisfactorily completed as provided in § 175-55D(4). Exceptions and modifications:
- (a) A copy of the release of lot, § 175-55D(5)(a), is not required;
  - (b) If an unaccepted street is not to be presented for acceptance by the Town of Lexington as a public street, only the certificate of the registered professional engineer or landscape architect as to the construction completed is required. If an unaccepted street is to be presented for acceptance by the Town of Lexington as a public street, the statement from the Town Engineer as to the improvements that have been satisfactorily completed shall be provided prior to the issuance of the building permit for the new dwelling;
  - (c) A set of as-built plans, as described in § 175-56B(2)(a) shall be submitted with the request for issuance of a certificate of occupancy.
- (3) Performance guaranty in special circumstances. A performance guaranty, required for the implementation of a definitive subdivision plan, is usually not required for the construction and inspection of an unaccepted street. In special circumstances, such as, but not limited to, winter conditions (See § 175-55E), surety may be required. In those circumstances, surety shall be furnished as provided in § 175-54C through F, and released as provided in § 175-56B.
- (4) When construction work may start. No construction work on the improvement of the unaccepted work shall begin until the Planning Board has approved the street improvement plan. Construction work is defined in § 175-55A(2).
- (5) Construction of street to be accepted by the Town. If an unaccepted street is to be presented for acceptance by the Town of Lexington as a public street, the following sections shall apply:
- (a) §175-55A(4), Authority to inspect.
  - (b) §175-55A(5), Schedule; access for inspection.
  - (c) §175-55B, Administrative steps prior to construction.
  - (d) §175-56B(2), Documents to accompany developer's request.
  - (e) §175-56B(9), Escrow funds for landscaping.
- (6) Certificates of completion. If an unaccepted street is not to be presented for acceptance by the Town of Lexington as a public street, and if the unaccepted street remains in private ownership, the Town Engineer will not

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be responsible for inspecting work in progress or certifying its completion. Prior to the issuance of a certificate of occupancy, the certificates of completed construction of the registered professional engineer, and landscape architect, as provided in § **175-56B(2)(b)** and **(d)** shall be submitted.



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## Article XIII. RESERVED

## Article XIV. PLANNED DEVELOPMENT DISTRICTS

Note: This article acts as both:

- 1) A step-by-step listing of required submittals and procedures to amend the Lexington Zoning Bylaw to create either an RD (Planned Residential Development) or a CD (Planned Commercial Development) District; and
- 2) A policy on the timing and documentation required to be submitted in order for a petition to qualify for a favorable recommendation by the Planning Board to the Town Meeting.

### § 175-69. Objectives; sequence of review.

- A. Objectives of the planned development zoning district procedure. The Planning Board has adopted the following objectives for the planned development zoning district procedure:
- (1) To explain the planned development zoning district procedure as used in Lexington;
  - (2) To provide adequate information in a timely manner, and well before the vote of the Town Meeting, to permit review by the Planning Board, other Town boards and departments, by Town Meeting members, and affected neighborhood groups;
  - (3) To aid in the presentation of a proposal for a zoning district that has standards that are created for only one location and will not be applicable anywhere else in Lexington;
  - (4) To permit an applicant/developer to present a proposal for a specific development proposal that can be reviewed thoroughly by the Town Meeting and will be constructed as approved by the Town Meeting;
  - (5) To allow the applicant/developer to make a binding offer to impose restrictions on the development;
  - (6) To allow the applicant/developer to make a binding offer to provide public infrastructure improvements or make a financial contribution to the Town to mitigate the impacts of the proposed development;
  - (7) To permit the specific features of a development proposal [See Subsection A(4) above.], the restrictions or other conditions [See Subsection A(5) above], and the infrastructure improvements or financial contributions [See Subsection A(6) above.] to be presented in a process open to the citizens and officials of the Town and included in the Town Meeting approval;
  - (8) To permit the Town and the applicant/developer to share some of the increase in property value that may result from the change in zoning district and to allocate some of that increase to the provision of public infrastructure improvements or a financial contribution to the Town to

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mitigate the impacts of the proposed development or provide such other public benefits as may be associated with the proposed development;

- (9) To inform prospective developers of the procedural requirements for submitting a proposed CD or RD amendment to the Zoning Map;
- (10) To recognize the time and expense to the applicant/developer for preparing a proposal in the Lexington rezoning process; to set up a sequence of submission requirements that progresses from the general to the detailed with a corresponding investment of time and money by the applicant/developer; to permit an applicant/developer at any stage to decide not to pursue the application and not incur all the expense required to carry a rezoning petition through full Town Meeting review.

B. Sequence of review.

- (1) Objectives of review procedures. In addition to the objectives set forth in Subsection A for the review of a proposal for rezoning land to a planned development zoning district, the objectives set forth in § 175-8 are incorporated by reference here.
- (2) Sequence of review. The Planning Board recommends that a person seeking the rezoning of land to a planned development zoning district follow the sequence set forth below:
  - (a) Sketch plan (recommended, not required). An initial and informal way to present a proposal to the Planning Board to see what it may find acceptable prior to filing a petition for change of zoning district. The first step in a dialogue between the applicant and the Planning Board in developing a proposal that the Planning Board might be able to recommend favorably to the Town Meeting.
  - (b) Pre-preliminary site development plan (recommended, not required). Available only to those applicants who have filed a sketch plan, this stage provides an opportunity for final review by the Planning Board of the preliminary site development and use plan prior to filing the petition for change of zoning district with the Board of Selectmen and before the filing of the preliminary site development and use plan that will be the subject of the public hearing.
  - (c) Petition for change of zoning district (required). A petition submitted to the Board of Selectmen to place an article on the warrant for the Town Meeting.
  - (d) Preliminary site development and use plan (required). Submitted after filing a petition for change of zoning district; includes all material needed for the public hearing and presentation to the Town Meeting.
  - (e) Definitive site development and use plan (required, but only after Town Meeting approval of rezoning petition). Submitted to Board of Appeals; includes construction details and other detailed information necessary to comply with the preliminary site development and use plan approved by the Town Meeting.

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- (3) Difference between rezoning petition and proposal for rezoning. As used in these Regulations, "petition" means the document, Note: The Developer's Guide prepared by the Planning Department has the recommended form of that petition. with accompanying map of the land proposed to be rezoned (See § 175-74B), submitted to the Board of Selectmen to place an article on the warrant for the Town Meeting to amend the Zoning Bylaw and Zoning Map to change the zoning district designation of a tract of land. A proposal for rezoning includes the text of a preliminary site development and use plan, plans and other visual representations, other exhibits, studies and documentation presented:
    - (a) To the Planning Board for its advice before the petition is filed;
    - (b) For the conduct of a public hearing before the Planning Board after the petition is filed; and
    - (c) To the Town Meeting for action.
  - (4) Right of applicant to petition not abridged. Nothing in these Regulations should be interpreted to prevent a property owner from petitioning the Town Meeting for the rezoning of land. These Regulations set forth procedures and guidelines for how the Planning Board will carry out its responsibilities in making an advisory recommendation to the Town Meeting on a rezoning petition.

§ 175-70. Preliminary site development and use plan.

- A. Relationship to Zoning Bylaw. The preliminary site development and use plan is the basic document that regulates development in a planned development zoning district. Specific standards that differ from those set forth in the Zoning Bylaw may be included in a planned development zoning district provided they comply with the minimum and maximum standards set forth in Table 2, Schedule of Dimensional Controls, for the RD District and in § 135-7.3.3 of the Zoning Bylaw.
- B. Requirements for text. The text of the preliminary site development and use plan shall include at least the following:
  - (1) A listing of the plans and other documents that are part of the preliminary site development and use plan; the plans and other documents shall be identified by title, who prepared them, and their latest date;
  - (2) A provision that any sale or transfer of rights or interests in the development shall include a condition that successors are bound to the terms and conditions of the preliminary site development and use plan; and
  - (3) In the case of an RD Planned Residential Development District:
    - (a) The number of dwelling units, or their equivalent;
    - (b) The types of buildings (See Zoning Bylaw, definition of "dwelling.");
    - (c) The approximate number of dwelling units by bedroom type (efficiency-studio, one-bedroom, two-bedroom, three-bedroom, etc.), including the approximate number of square feet in each dwelling

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unit or their equivalent and the total number of square feet of gross floor area and net floor area in the development;

(d) Estimated sales or rental level of the dwelling units.

(4) In the case of a CD Planned Commercial District:

(a) Identification of permitted uses which may be:

[1] A listing of permitted uses or a narrative describing the type and character of uses;

[2] A cross-reference to the Zoning Bylaw, Table 1, Permitted Uses and Development Standards; or

[3] A combination of Subsection **B(4)(a)[1]** and **[2]**.

(b) Dimensional standards, which may be:

[1] A listing of dimensional standards;

[2] A cross-reference to the Zoning Bylaw, Table 2, Schedule of Dimensional Controls; or

[3] A combination of Subsection **B(4)(b)[1]** and **[2]**.

Note: The dimensional standards in an RD Planned Residential Development District are listed in the Zoning Bylaw, Table 2, and in § [135-7.3.3](#).

(c) Identification of the standards and requirements for landscaping, transition and screening, off-street parking and loading, and signs. This may be a narrative describing special regulations unique to the development and/or a cross-reference to provision of the Zoning Bylaw that will apply to the CD District.

Note: The corresponding standards in an RD Planned Residential Development District are set forth in §§ 135-5.1, 5.2 and 5.3 of the Zoning Bylaw.

(d) Such special conditions (See § **175-11C**) as the applicant may want to impose, which may include grants of benefits to the Town such as land for public purposes, construction of improvements (or financial contributions therefore) in behalf of the Town, or other development limitations such as aesthetic features.

C. Text controls. In the case of a conflict or inconsistency between the text of the preliminary site development and use plan and plans or other exhibits attached to it, the text shall control.

D. Regulatory and other parts of the preliminary site development and use plan application. The description of the material to be submitted with a preliminary site development and use plan and with a definitive site development and use plan is listed below

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- (1) For a CD Planned Commercial District:
    - (a) Uses to be permitted in the buildings, which may be a narrative describing the type and character of uses and/or a listing, by cross-reference, of uses to be permitted as they appear in Table 1, Permitted Uses and Development Standards, and the maximum floor area ratio;
    - (b) Other zoning provisions; this may be a narrative describing special regulations unique to the development and/or a cross-reference to provisions of this bylaw that will apply to the CD District.
  - (2) For an RD Planned Residential Development District:
    - (a) Number of dwelling units, or their equivalent;
    - (b) The types of buildings;
    - (c) Approximate number of dwelling units by bedroom type (efficiency-studio, one-bedroom, two-bedroom, three-bedroom, etc.) including the approximate number of square feet in each dwelling unit and the total number of square feet of floor area in the development; and
    - (d) Estimated sales or rental level of the dwelling units.
  - (3) For either a CD Planned Commercial District or an RD Planned Residential Development District:
    - (a) A visual representation, such as sketches or photographs, of the general scale and massing of buildings;
    - (b) Special conditions, if any, applicable to the proposed development which may include grants of benefits to the Town such as land for public purposes, construction of improvements (or financial contributions therefore) in behalf of the Town, or other development limitations such as aesthetic features.
    - (c) The following parts of the preliminary site development and use plan application are to be considered regulations that affect the development of the land within the planned development zoning district:
      - [1] The text of the preliminary site development and use plan as described in Subsection **B**;
      - [2] For either a CD Planned Commercial District, or an RD Planned Residential Development District: a visual representation, such as sketches or photographs, of the general scale and massing of buildings;
      - [3] A property rights and dimensional standards plan [See § 175-11A(3)];
      - [4] A site construction plan [See § 175-11A(4)];
      - [5] A landscape plan [See § 175-11A(7)];
      - [6] A table of development data. [See § 175-11B(1)]

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- E. Other nonregulatory material. The following parts of the preliminary site development and use plan application are considered to be explanations, background information and justification for a rezoning and are not to be treated as regulations that affect the development of the land within the planned development zoning district:
- (1) A site analysis map [See § 175-11A(1) of Part 1, Article II of this chapter.];
  - (2) A locus-context map [See § 175-11A(2) of Part 1, Article II of this chapter.];
  - (3) A street layout plan and a street profile plan [See § 175-11A(5) of Part 1, Article II of this chapter.];
  - (4) A utilities plan [See § 175-11A(6) of Part 1, Article II of this chapter.];
  - (5) A specific, written proposal dealing with any of the conditions as outlined in § 175-11C(1) through (8). The proposals will be outlined in the text [See Subsection D(1)(a) above.]. The full proposal, such as a deed of land or a financial contribution, will be separate;
  - (6) A hydrologic and drainage analysis [See § 175-11B(2) of Part 1, Article II of this chapter.], if provided;
  - (7) Soil surveys, test pits or test borings [See § 175-11B(3) of Part 1, Article II of this chapter.], if provided;
  - (8) A traffic study, [See Zoning Bylaw, Article XII, and § 175-71B(3)], if provided;
  - (9) Reasons for rezoning [See § 175-71B(4)];
  - (10) Comparison with development permitted in existing zoning district [See § 175-71B(5)];
  - (11) Compliance with Planning Board Comprehensive Plan or other policies [See § 175-71B(6)];
  - (12) Analysis of impact on public facilities and services [See § 175-71B(7)];
  - (13) Analysis of impact on environment [See § 175-71B(8)];
  - (14) Analysis of Town fiscal considerations [See § 175-71B(9)];
  - (15) Other special permits (other than a special permit with site plan review) [See § 175-71B(10)], if applicable.

§ 175-71. Types of plans; information required.

- A. Format of plan and documents; information required. The format and the information required for any of the plans or other documents cited in this section are set forth generally in §§ 175-10 and 175-11 and are incorporated by reference here. Some modification of the format of plans or other documents and of the information required by §§ 175-10 and 175-11 is required for a proposal for rezoning as noted in the provisions dealing with the various types of plans.
- B. Information required for a proposal for rezoning. The following information shall be submitted for a proposal to rezone land to the RD Planned Residential Development or CD Planned Commercial Zoning Districts: (Note: These are in

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addition to what is required in §§ **175-10** and **175-11** of Part 1, Article II of this chapter.)

- (1) Text setting forth applicable zoning provisions. (See § **175-70B**.)
- (2) A visual representation, such as sketches or photographs, of the general scale and massing of buildings, for either a CD Planned Commercial District or an RD Planned Residential Development District. Visual representations may include sketch site plans, building plans, building elevations, and perspective sketches. In each case they shall be accurate with respect to the scale and general appearance of the buildings in the context of their actual location. Neighboring buildings, topography, streets, major trees, and other landmarks shall be accurately shown. In the case of perspective sketches, the viewpoint shall be realistic and, if possible, it shall be identified on the sketch site plan.
- (3) Traffic study. See Zoning Bylaw § **135-5.5.2**. Some of the elements of a traffic study are recommended for those rezoning proposals that do not meet the thresholds set forth in § **135-5.5.2** of the Zoning Bylaw.
- (4) Reasons for rezoning. A written statement indicating why a change to the proposed zoning district proposed is justified and is considered appropriate for the area.
- (5) Comparison with development permitted in existing zoning district. A written analysis, supported by data, and in certain cases by a proof plan, so that the maximum development potential allowed by right in the existing zoning district can be compared to the proposed rezoning.
  - (a) Required: In the case of land in an existing one-family (RO, RS) or two-family (RT) residence district that is proposed to be rezoned to an RD or CD District, a proof plan. [See § **175-11A(8)**] In the case of land in an existing multifamily or commercial district that is proposed to be rezoned to an RD or CD District, an analysis showing:
    - [1] The amount of gross and net floor area and the floor area ratio of the existing development on the site;
    - [2] For land in an existing multifamily district, the maximum number of dwelling units permitted;
    - [3] For land in an existing commercial district, the amount of gross and net floor area that would be permitted if the site were developed to the maximum floor area ratio allowed.
- (6) Compliance with Planning Board Comprehensive Plan or other policies. For an RD Planned Residential Development District:
  - (a) A statement containing one or more proposals showing how the proposed rezoning would comply with the parts of the Housing Element of the Comprehensive Plan that are described as the Inclusionary Housing Policy.
  - (b) A written analysis of which other policies in the Housing Element of the Planning Board's Comprehensive Plan, in addition to those that

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comprise the Inclusionary Housing Policy, will be advanced by the proposal and with which policies the proposal may be in conflict.

- (7) Impact on public facilities and services. A written analysis of the effect of the proposed development on the provision of various Town services and existing public facilities (sanitary sewer, water supply, drainage, streets, public transportation, and fire suppression). For an RD Planned Residential Development, the applicant should provide an age group profile of the occupants of comparable types of dwelling units or their equivalent (See § 175-11A(8)) with which the applicant is familiar so that potential service requirements of public schools and other Town services may be evaluated by Town officials.
- (8) Impact on environment. If applicable, a written analysis of the effect of the proposed development on environmental considerations such as, but not limited to, groundwater, historical or archaeological resources, effects on wildlife, including any rare or endangered species, effects on vegetation, including any rare or endangered species, disposal of waste materials, including potentially hazardous materials, air quality, or noise.
- (9) Town fiscal considerations. A written analysis of the estimated assessed valuation and annual tax revenue for the Town, including real estate and motor vehicle excise and other revenues. This analysis shall include the basis for the projected assessed valuation, including the projected value of building(s) and land. All data shall be expressed in current fiscal year dollars.
- (10) Other special permits if applicable. The applicant should identify any other special permits that might be necessary.

C. Sketch plan.

- (1) Sketch plan recommended. Submission of a sketch plan is not required but is recommended.
- (2) Information required. The information shown in a sketch plan shall be the same as that required by § 175-11A for the plans indicated with the following exceptions and modifications:
  - (a) A site analysis map [See § 175-11A(1).];
  - (b) A locus-context map [§ 175-11A(2).];
  - (c) Required: a property rights and dimensional standards plan [See § 175-11A(3).] showing, if applicable, only: the approximate division of the property into parcels, the approximate location of open space, and the approximate location of sections of land to be granted to the Town; not required: this exhibit of the sketch plan does not need to be prepared by a land surveyor or civil engineer; the information listed in § 175-11A(3)(a)[1] through [11] is not required except in a general manner;
  - (d) Required: a site construction plan [See, § 175-11A(4).] showing only the approximate location of buildings and interior drives, the approximate grading of significant parts of the site and, if applicable,

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- any common open space; not required: the dimensions of streets, drives, parking areas and the proposed drainage system;
- (e) Required: a proof plan [See § 175-11A(8).] but only in the case of land in an existing single-family or two-family residence district that is proposed to be rezoned to an RD or CD District, so that development permitted in the existing zoning district can be compared to the proposed rezoning; not required: in the case of land in an existing multifamily or commercial district that is proposed to be rezoned to an RD or CD District;
  - (f) Required: a table of development data [See § 175-11B(1)] showing only the approximate: total land area, area in vegetated wetland, developable site area, area and percentage of site coverage of buildings, and, if applicable, the approximate amount of common open space, area covered with impervious surface, impervious surface ratio, gross and net floor area of buildings, floor area ratio, number and density of dwelling units, number of off-street parking spaces and loading bays; not required: length of street, if applicable, and area within street right-of-way;
  - (g) If applicable, an outline of any of the documents or exhibits mentioned in § 175-11C(1) through (8).
  - (h) Not required at the sketch plan stage: a street layout and profile plan [See § 175-11A(5)], a utilities plan [See § 175-11A(6)], a landscape plan [See § 175-11A(7).], hydrologic and drainage analysis [See § 175-11B(2)], and soil surveys, test pits, and test borings. [See § 175-11B(3)]
- (3) Additional information required for rezoning proposals. In addition to the information required by Subsection C(2), a sketch plan shall include the following supplemental information:
- (a) For an RD Planned Residential Development District, information about dwelling units [See § 175-70B(3)]; at the sketch plan stage a general description is sufficient;
    - [1] Recommended but not required: if known at this stage, the approximate number of dwelling units, or their equivalent, by bedroom type (efficiency-studio, one-bedroom, two-bedroom, three-bedroom, etc.), including the approximate number of square feet in each dwelling unit and the total number of square feet of gross and net floor area in the development;
    - [2] Recommended but not required: approximate sales or rental level of the dwelling units, or their equivalent;
  - (b) For a CD Planned Commercial District, a general description of uses and other zoning provisions [See § 175-70B(4)];
  - (c) For either a CD Planned Commercial District or an RD Planned Residential Development District a visual representation, such as sketches or photographs, of the general scale and massing of buildings [See Subsection B(2)];

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- (d) Traffic impacts:
- [1] Required, at the sketch plan stage:
    - [a] A preliminary estimate of trip generation [See § 175-11A(10)(a)]
    - [b] A count of average daily traffic by machine on the frontage street only;
    - [c] An inventory of roadway characteristics on the frontage street only [See § 175-11A(10)(f)];
    - [d] An inventory of roadway characteristics of the principal approach streets adjacent to the development site and of the streets in the intersections at which turning movement counts are taken showing the width of the right-of-way and of the traveled way, traffic control devices, obstructions to adequate sight distance, the location of driveways or access drives within 500 feet of the entrance to the site for uses that are substantial trip generators, and the presence or absence of sidewalks and their condition.
  - [2] Not required: a full traffic study (See Zoning Bylaw § 135-5.5.3) is not required at the sketch plan stage but will be required later for the preliminary site development and use plan. If the investigation done in Subsection C(3)(d)[1][a] or [b] above shows the traffic level of service for any intersections analyzed is at or below LOS D, more detailed information (See Zoning Bylaw § 135-5.5.3) may be helpful at this stage;
- (e) Reasons for rezoning [See Subsection B(4).];
- (f) Comparison with development permitted in existing zoning district [See Subsection B(5)];
- (g) Compliance with Planning Board Comprehensive Plan or other policies [See Subsection B(6)];
- (h) Impact on public facilities and services [See Subsection B(7)];
- [1] Recommended, not required, at the sketch plan stage: a preliminary written investigation of the capacity of existing public facilities to serve the development, including the effect of the proposed development on the provision of various Town services;
  - [2] Not required at the sketch plan stage: a more detailed analysis of these services and of fire suppression, drainage, and, for residential development, schools and other Town services;
- (i) Impact on environment [See Subsection B(8)]. A preliminary written investigation of the effect of the proposed development on environmental considerations;

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- (j) Town fiscal considerations. [See Subsection **B(9)**] A written preliminary estimate of the projected assessed valuation and annual tax revenue for the Town, including real estate and motor vehicle excise and other revenues;
  - (k) If applicable, a listing of special permits that may be required. [See Subsection **B(10)**]

D. Pre-preliminary site development and use plan.

- (1) Pre-preliminary site development and use plan recommended. For those applicants who have completed the sketch plan stage with the Board, submission of a pre-preliminary site development and use plan is not required but is recommended. This stage provides an opportunity for review of a preliminary site development and use plan and for the Planning Board to make recommendations before it is filed officially.
- (2) Information required. The information submitted for a pre-preliminary site development and use plan shall be the same as that required by Subsection **E** of this section for a preliminary site development and use plan.

E. Preliminary site development and use plan.

- (1) Preliminary site development and use plan required. Submission of a preliminary site development and use plan is required.
- (2) Information required. The information shown in a preliminary site development and use plan shall be the same as that required by § 175-11A for the plans indicated with the following exceptions and modifications:
  - (a) A site analysis map [See § 175-11A(1)];
  - (b) A locus-context map [See § 175-11A(2)] which may be based on existing map resources;
  - (c) A property rights and dimensional standards plan [See § 175-11A(3)];

Note: A map and a metes and bounds description of the land proposed to be rezoned is required for the petition. (See [§ 175-74.](#))

- (d) Required: a site construction plan [See § 175-11A(4).]; not required: a limit-of-work line;
- (e) Required: a street layout plan and a street profile plan [See § 175-11E(3)(e).], but only if a new street is proposed to be constructed and if that street will be proposed for acceptance as a Town street; not required: a street layout plan and a street profile plan [See § 175-11A(5).] provided that any proposed street or "interior drives" [See definition in the Zoning Bylaw and § 135-7.3.3.1).] constructed will be owned and maintained privately;
- (f) Required: a utilities plan [See § 175-11A(6)] in general but sufficient to show compliance with the applicable design standards of the Development Regulations and the Subdivision Regulations;

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- (g) Required: a landscape plan [See § 175-11A(7)]; not required: plant schedule, proposed street furniture plan;
  - (h) A table of development data [See § 175-11B(1)];

Note: An accurate determination of developable site area shall be submitted. § 175-11E(3)(h) allows an estimate in several cases for a preliminary site development plan. At this stage a delineation of the vegetated wetlands, that shall be based on a field survey and approved by the Lexington Conservation Commission, is required. The area within the wetlands boundaries shall be certified by a land surveyor or professional engineer. This determination by the Lexington Conservation Commission is survey information only and is not considered to be a review by the Conservation Commission of the impact of the proposed development under the Wetland Protection Act.

- (i) And, if applicable:
  - [1] Required: a specific, written proposal dealing with any of the conditions as outlined in § 175-11C(1) through (8); not required: the draft of the condition in proper legal form;
  - [2] A hydrologic and drainage analysis [See § 175-11B(2)] but only if the Planning Board has questioned whether the development could be constructed as proposed;
  - [3] Soil surveys, test pits or test borings [See § 175-11B(3)] but only if needed to determine the suitability of the land for the proposed drives or streets, drainage and utilities;
  - [4] If a sketch plan was filed, a written response to the Planning Board's comments and recommendations in its decision.
- (3) Additional information required for a rezoning proposal. In addition to the information required by Subsection C(2), a preliminary site development and use plan shall include the following supplemental information:
  - (a) Text setting forth applicable zoning provisions (See § 175-70B);
  - (b) For an RD Planned Residential Development District, information about dwelling units [See § 175-70B(3)(a)];
  - (c) For a CD Planned Commercial District, a description of uses and other zoning provisions [See § 175-70B(4)(a)];
  - (d) For either a CD Planned Commercial District or an RD Planned Residential Development District, a visual representation of proposed building(s) [See Subsection B(2)];
  - (e) Traffic study [See Subsection B(3)];
  - (f) Reasons for rezoning [See Subsection B(4)];
  - (g) Comparison with development permitted in existing zoning district [See Subsection B(5)];

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- (h) Compliance with Planning Board Comprehensive Plan or other policies [See Subsection **B(6)**];
  - (i) Impact on public facilities and services [See Subsection **B(7)**];
  - (j) Impact on environment [See Subsection **B(8)**];
  - (k) Town fiscal considerations [See Subsection **B(9)**];
  - (l) If applicable, a listing of special permits that may be required [See Subsection **B(10)**];
  - (m) If the applicant submitted a sketch preliminary site development and use plan, written comments on how the applicant has responded to the Planning Board's decision on the sketch plan.
- F. Definitive site development and use plan. If the Town Meeting approves the rezoning of land, a definitive site development and use plan shall be filed with the Board of Appeals.
- § 175-72. Application and review procedures.
- A. Same procedures as Zoning Bylaw and Part 1, Article II of this chapter. See the following sections of Part 1, Article II of this chapter:
- (1) § 175-9, Responsibilities of applicant.
  - (2) § 175-12, Filing and acceptance of application.
  - (3) § 175-13, Review of applications.
  - (4) § 175-14, Decision.
- B. Planning Director's authority. The Planning Director is authorized to act in behalf of the Planning Board in its authority:
- (1) to waive the submission of certain information or plans;
  - (2) to determine if an application is complete; and
  - (3) to notify other Town boards and departments.
- C. Application form. An applicant submitting a sketch plan, a pre-preliminary plan or a preliminary site development and use plan in relation to a proposal for rezoning land to a planned development zoning district shall submit a Form B (See Appendix.) Editor's Note: The Appendix material is on file at the office of the Planning Department with the appropriate zoning entries completed.
- D. Fee required. An applicant submitting a sketch plan or a preliminary site development and use plan in relation to a proposal for rezoning land to a planned development zoning district shall pay the fee set forth in § 175-12D(7) of Part 1, Article II of this chapter. There is no fee for the submittal of a pre-preliminary site development and use plan.
- E. Date of submittal of petition or proposal. [See § 175-69B(3) for explanation of the difference between a petition and a proposal for rezoning.] The petition to place an article on the warrant for the Town Meeting shall be submitted to the Board of Selectmen on or before the date on which the warrant is closed. A map of the area and a metes and bounds description of the land proposed to be rezoned shall also be submitted. (See § 175-74 about the suggested form of

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that petition, map and metes and bounds description and the dates of submittal.)

- (1) A preliminary site development and use plan in relation to a proposal for rezoning the land to a planned development zoning district shall be submitted to the Planning Board: for the Annual Town Meeting, not later than 14 days after, or, for a Special Town Meeting, not later than the same day, the petition to place an article on the warrant is filed with the Board of Selectmen.
- (2) If the applicant submits a pre-preliminary site development and use plan, it shall be submitted at least 30 days prior to the date set by the Board of Selectmen for closing the warrant for the Annual Town Meeting.
- (3) It is recommended that an applicant submit a sketch site development and use plan and that it be submitted at least 60 days prior to the date set by the Board of Selectmen for closing the warrant for the Annual Town Meeting.

F. Review procedure for a sketch plan.

- (1) Initial presentation. Shortly after the application is determined to be complete, the applicant will make an initial presentation to the Planning Board at a public meeting. The initial presentation is not a public hearing and the Planning Board will usually not notify others to attend.
- (2) Determination of review required. After an initial presentation to it, based on the location of the proposed rezoning and the specifics of the proposed development, the Board shall determine whether:
  - (a) To respond to the applicant directly; or
  - (b) Defer a response and seek a broader review from other Town boards, committees and departments and from residents of the neighborhood adjoining the site.
- (3) Procedure for broader review. If it determines that a sketch plan should have broader review, the Planning Board, prior to making the written recommendation described in § 175-73A(1), will:
  - (a) Notify other Town boards, committees and departments that the Board believes may be affected by, or interested in, the proposed rezoning;
  - (b) Notify at least all persons who would receive notice of an application for approval of a special permit as described in § 175-13F(1)(b), of:
    - [1] The receipt of the proposal with a brief summary of it; and
    - [2] The Board's procedures and those prescribed in the Zoning Bylaw for review, public meetings and hearings and official action on a proposed amendment to the Zoning Map; and
  - (c) Conduct a public information meeting, as described in § 175-13G
- (4) Information provided to interested citizens by applicant. Upon receipt of notification from the Planning Board that it has determined that there should be broader review, the applicant shall promptly place in Cary

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Memorial Library at least one full set of the information [See § 175-71C(2) and (3.)] submitted to the Planning Board with the sketch plan application. It is recommended that at least one full set of that information be made available to residents of the neighborhood adjoining the proposed rezoning.

- (5) Second presentation. Depending on the comments and recommendations received from others, the Planning Board may request that the applicant make a second presentation at a public information meeting.
- G. Review procedure for a pre-preliminary site development and use plan. After the submittal of a pre-preliminary site development and use plan has been determined to be complete, the Planning Board will make a written comment to the applicant. Depending on the content of the application, the Planning Board may ask the applicant to make a presentation to the Board. In addition to the material required for a preliminary site development and use plan, the applicant shall include written comments on how the applicant has responded to the Planning Board's decision on the sketch plan.
- H. Review procedure for a preliminary site development and use plan.
- (1) Filing of a preliminary site development and use plan in relation to public hearing. The Planning Board will not schedule the public hearing on the proposed rezoning required by MGL c. 40A, § 5, until a properly executed Form B, including the preliminary site development and use plan, and the fee have been received and the Planning Director has determined that the application is complete. Failure to comply with the procedures set forth in these Regulations is grounds for a negative recommendation to the Town Meeting.
  - (2) Review by Town committees and departments. Prior to making its recommendation to Town Meeting on a preliminary site development and use plan, the Planning Board will request a recommendation from the Town Engineer, the Conservation Commission and such other departments, boards or committees as the Board believes may be affected by, or interested in, the proposed rezoning.

## § 175-73. Decisions.

### A. Sketch site development and use plan.

- (1) Decision on sketch plan. The Planning Board will make a written recommendation that will indicate whether the proposed use of the land, without consideration of the proposed density or other design features, is acceptable to the Board.
  - (a) If the use alone is not acceptable, the Board will indicate the proposal has no chance to receive a subsequent favorable recommendation by the Board.
  - (b) If the use is acceptable and after broader review [See Subsection A(3).] the recommendation will indicate whether:
    - [1] The proposed density and other design features are acceptable, or could be acceptable if modified;

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- [2] The proposed conditions on the development, or mitigating measures or benefits to the neighborhood or the Town, are acceptable, or could be acceptable if modified.
- (c) The Board may cite specific improvements or modifications of the proposal that are necessary for it to make a favorable recommendation to the Town Meeting.
- (2) Time period for decision on sketch plan that does not have broader review. For a sketch plan that the Planning Board determines does not need to have broader review, the Board will make a recommendation on the acceptability of the proposed use [See Subsection **A(1)**.] within 30 days after a sketch plan has been properly submitted and determined to be complete, as provided in § **175-12C** of Part 1, Article II of this chapter.
- (3) Procedure for sketch plan subject to broader review. If, after the initial presentation of a sketch site development and use plan to it, the Planning Board determines that the location of the proposed rezoning or of the proposed development should have a broader review and recommendations should be obtained from others, the Planning Board will defer the written recommendation in Subsection **A(1)** to allow time to receive recommendations from other Town boards, committees and departments and from interested citizens. At its option, the Planning Board may ask the applicant to make a second presentation at a public information meeting.
- (4) Time period for sketch plan subject to broader review. The Planning Board will make the written recommendation described in Subsection **A(1)** within 60 days after a sketch plan has been properly submitted and determined to be complete.
- (5) Effect on subsequent decisions; right to petition. The Planning Board's recommendation, at the sketch plan stage, that the proposal has a chance to receive a favorable recommendation does not guarantee the Board's subsequent support because more details of the proposal must be submitted and evaluated. An unfavorable recommendation, at the sketch plan stage, should not be interpreted to deny an applicant the right to petition the Town Meeting for a rezoning of the land [See § **175-69B(4)**]; it does affect the likelihood of obtaining a favorable recommendation from the Planning Board.
- B. Pre-preliminary site development and use plan.
- (1) Decision on pre-preliminary site development and use plan. The Planning Board will make a written recommendation that will indicate whether:
- (a) The proposed density and other design features are acceptable, or could be acceptable if modified;
- (b) The proposed conditions on the development, or mitigating measures or benefits to the neighborhood or the Town, are acceptable, or could be acceptable if modified.
- (2) Time period for decision. The Planning Board will make a recommendation on a pre-preliminary site development and use plan within 30 days after

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the pre-preliminary plan has been properly submitted and determined to be complete, as provided in § **175-12C**,

- (3) Effect on subsequent decisions; right to petition. The Planning Board's recommendation, at the pre-preliminary plan stage, that the proposal has a chance to receive a favorable recommendation does not guarantee the Board's subsequent support because more details of the proposal must be submitted and evaluated and the Board must determine if its recommendations have been followed. An unfavorable recommendation, at the pre-preliminary plan stage, should not be interpreted to deny an applicant the right to petition the Town Meeting for a rezoning of the land [See § **175-69B(4)**.]; it does affect the likelihood of obtaining a favorable recommendation from the Planning Board.

C. Preliminary site development and use plan.

- (1) Decision on a preliminary site development and use plan. After conducting a public hearing, the Planning Board will make a written recommendation to the Town Meeting that the rezoning of the land be approved or disapproved.
- (2) Time period for decision. The Planning Board will make a written recommendation on the rezoning petition and the preliminary site development and use plan prior to the Town Meeting vote on the rezoning petition.
- (3) Basis for Planning Board recommendation. The Planning Board's recommendation to the Town Meeting will be based on the information presented at the public hearing. [See § **175-13F(5)** and **G(4)** and **(5)**.] The Planning Board's recommendation will not include any revisions made by the applicant after that time unless the Planning Board specifically requests a revision which, in its judgment, is necessary to improve the plan.
- (4) Contents of Planning Board recommendation. The Planning Board recommendation to the Town Meeting will include at least the following:
  - (a) A recommendation as to whether the rezoning petition, including the preliminary site development and use plan, should be approved or not, and the reasons for the recommendation;
  - (b) Site and development analysis concentrating on the physical development of the site and its surroundings and including:
    - [1] How the development relates to the natural features of the site;
    - [2] The intensity of the proposed development;
    - [3] The adequacy of vehicular access and internal circulation;
    - [4] On-site environmental effects, such as drainage, groundwater, and waste disposal;
    - [5] Potential effects on nearby properties;
    - [6] The quality of the proposed design;
  - (c) Impact on public facilities and services: an analysis of the capacity of existing public facilities, services and programs (sewer, water, streets,

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public transportation, fire, drainage, and, for residential developments, schools and other Town services), including consideration of any proposed improvements or mitigating measures, to serve the proposed development;

- (d) Analysis of Town fiscal considerations, including potential revenue and costs;
- (e) Policy analysis: comments on whether the proposed development complies with such elements of the Comprehensive Plan that have been adopted, other Planning Board policies, and such other Town policies as may be applicable;
- (f) Planning considerations: other points not covered above, such as the potential effects of the proposed development on the area immediately around it;
- (g) Purposes of zoning: a discussion of how the rezoning would satisfy:
  - [1] The purposes of zoning (See Zoning Bylaw § 135-1.2.) and Massachusetts Acts 1975, Chapter 808, § 2A;
  - [2] For an RD Planned Residential Development District, the objectives of planned residential development (See Zoning Bylaw §135-7.3.);
- (h) A comparison with the development permitted by right in the existing zoning district;
- (i) Comments and recommendations received from Town boards and departments; and
- (j) Public hearing: a summary of the main points made by those attending the public hearing.
- (k) The Board may also comment on any special conditions that are proposed.

#### § 175-74. Petition for rezoning.

- A. Filing of petition for rezoning. The petition for rezoning - to place an article on the warrant for the Town Meeting to amend the Zoning Bylaw and Zoning Map to change the zoning district designation of a tract of land - shall be filed with the Board of Selectmen. Although the applicant is not required to file the petition for a rezoning with the Planning Board or to request that the Planning Board hold a public hearing, it is recommended that at the time of filing with the Selectmen the applicant provide the Planning Board with an informational copy of the petition and the map submitted to the Board of Selectmen.
- B. Map and metes and bounds description of area proposed to be rezoned. §135-2.3.1 of the Zoning Bylaw gives the responsibility to prepare the Official Zoning Map to the Planning Board. The applicant shall submit a map Note: A Developer's Guide published by the Planning Department provides a suggested format for the map and a form for the metes and bounds description. and metes and bounds description of the area proposed to be rezoned to the Planning Board at the time they are filed with the Board of Selectmen. If the

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proposed amendment is approved, the map will be published in the "Zoning District Maps," a booklet published by the Planning Board which is a part of the Lexington Zoning Bylaw.

- C. Information on map of area proposed to be rezoned. The map of the area proposed to be rezoned shall comply with the requirements of § 175-10, Format and custody of plan and documents, of Part 1, Article II of this chapter as modified below:
- (1) § 175-10C, General information on plan:
    - (a) Required: Subsection C(1), (3), (4), (5), (6) and (10);
    - (b) Not required: Subsection C(2), (7), and (8).
  - (2) The map shall be entitled "Proposed Rezoning of Land to the RD Planned Residential Development (or the CD Planned Commercial Development) District, Lexington, Mass."
  - (3) The map filed with the Planning Board shall be an original transparency on cloth or Mylar on a sheet 8 1/2 inches by 11 inches at a common engineering scale. This map may be a photographic reduction of a map drawn at a larger scale provided the reduction results in a common engineering scale, shown in inches. The map shall show:
    - (a) Streets in the vicinity, indicating whether they are public ways or unaccepted streets;
    - (b) The boundary lines, and the names of the owners, of all properties that abut the property proposed to be rezoned as they appear on the most recent Real Estate Tax Commitment List prepared by the Board of Assessors;
    - (c) If the boundary line of the proposed zoning district is not a property line, a clear means of locating the boundary, consistent with § 135-2.3.2. of the Zoning Bylaw, Rules for interpretation of district boundaries, shall be shown. As applicable, distances from reference lines shall be shown on the map;
    - (d) Dimensions and bearings, consistent with the metes and bounds description, for each length of line that comprises the perimeter boundary of the area proposed to be rezoned;
    - (e) The boundary line in its true relative position and with sufficient dimensions and bearings to establish its exact location with respect to at least two existing permanent bounds in existing ways; and
    - (f) Proposed bounds, markers and/or monuments.
- D. Metes and bounds description. A metes and bounds description shall be filed. It shall identify each length of line that comprises the perimeter boundary of the area proposed to be rezoned and shall include dimensions and bearings for each such line. The description shall state the area of the land proposed to be rezoned expressed in both square feet and acres.

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- E. Information on computer disk. The description of the boundary of the area proposed to be rezoned shall be submitted on a computer disk as required by § 175-10F.

§ 175-75. Effective date; repealer; amendments.

- A. Effective date. These Regulations shall be effective on March 13, 2013.
- B. Repeal of prior regulations. Upon the effective date of these Regulations, the "Guidelines and Policies for Petitions for RD, CD Zoning Amendments," adopted November 1, 1982, revised and updated through August 1990, are repealed.
- C. Amendment. These Regulations may be amended from time to time by a vote of the Planning Board at a public meeting.

§ 175-76. Interpretation of forms and charts.

- A. Forms. The Appendix contains sample forms for the administration of these Regulations. These forms are not part of the Regulations. Forms may be added or deleted and the content of the forms may be revised from time to time by administrative action of the Planning Board; such changes are not amendments to these Regulations and may be made without holding a public hearing.
- B. Notes and charts. These Regulations may contain comments, charts and other illustrations, which may be interspersed with the text of the regulations. They are intended to assist the applicant in understanding the Regulations and the Planning Board's policies and procedures but are not part of these Regulations. The notes are set off in a different typeface or in a box and or are labeled to show their status as comments, charts and illustrations.

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## Article XV. SITE PLAN REVIEW

### § 175-77. General provisions.

- A. Authority and purpose. These rules and regulations governing site plan review are adopted pursuant to § 135-9.5.4.2 of the Zoning Bylaw for the purpose of establishing uniform procedures and standards for the review of site plans submitted to the Planning Board or its designee, as hereinafter provided. Said review is intended to protect the health, safety, convenience and general welfare of the inhabitants of the Town of Lexington by assessing potential impacts on municipal services and utilities, traffic, the environment and aesthetics and by assuring that the same are adequately addressed. Site plan review is not aimed at the prohibition of permitted uses in a zoning district, but at the reasonable regulation thereof consistent with the public interest.
- B. Amendment. These rules may be amended from time to time by a majority vote of the Planning Board at any regularly scheduled, public meeting, following notice and a public hearing as required by § 135-9.5.4.2 of the bylaw.
- C. Conflict. In the event of any inconsistency or conflict between the rules and the bylaw, the bylaw shall control.
- D. Effective date. These rules, and any subsequent amendments thereto, shall become effective on the date the same are adopted. A copy of these rules shall be filed in the office of the Town Clerk within seven days of the date of adoption, and made available for inspection by any person or entity upon request.

### § 175-78. Definitions.

Except as provided hereinafter, all terms not defined in these rules shall be given the meanings prescribed by § 135-10 of the bylaw.

#### **APPLICANT**

Any person or entity submitting an application for site plan review to the Planning Board in accordance with § 135-9.5 of the bylaw. To be eligible to submit an application, an applicant must be the record owner of the property in question, a prospective purchaser thereof with a valid option or other equitable interest or a person or entity authorized by said record owner.

#### **APPLICATION**

All forms, plans, reports, studies or other documentation which together constitute an application for site plan review in accordance with § 135-9.5.4 of the bylaw.

#### **BOARD**

The Planning Board of the Town of Lexington.

#### **BYLAW**

The Town of Lexington Zoning Bylaw.

#### **CHANGE TO AN APPROVED SITE PLAN**

Any proposed exterior construction or expansion of a structure resulting in an increase of 500 square feet or more of total building gross floor area; or any

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change to approved lighting plans; or any increase in the number of parking spaces; or any change to approved landscaping plans. For the purposes of this definition, an approved site plan shall also mean any previously approved special permit with site plan review.

### **DESIGNEE**

The Planning Director. The Planning Director may consult with other municipal officials and agencies in the performance of his or her duties.

### **MAJOR SITE PLAN**

An application for site plan review made in accordance with § 175-81 of these rules.

### **MINOR SITE PLAN**

An application for site plan review made in accordance with § 175-80 of these rules. A minor site plan shall be reviewed by the Board's designee.

### **RULES**

These rules and regulations governing site plan review by the Planning Board.

### **TOWN**

The Town of Lexington.

§ 175-79. Applicability; preapplication review; waivers; approval or disapproval.

#### **A. Applicability.**

- (1) Pursuant to § 135-9.5.2 of the bylaw, the following types of activities and uses require site plan review by the Board or its designee:
  - (a) Exterior construction or expansion of a structure resulting in an increase of 500 square feet or more of total building gross floor area; or
  - (b) Any change(s) to an approved site plan as defined herein.
- (2) Any application showing exterior construction or expansion of a structure which results in an increase of less than 500 square feet of total building gross floor area in any three-year period shall be exempt from site plan review unless Subsection **A(1)(a)** or (b) of § 175-79 shall apply.

#### **B. Preapplication review.**

- (1) Preliminary site plan. All applicants are encouraged to submit a preliminary site plan to the Town's Planning Department for review in advance of filing an application with the Board. Such preliminary site plan shall not constitute a formal application for site plan review.
- (2) Appointment with Town staff. Prior to or upon submittal of a preliminary site plan, the applicant shall contact the Planning Department to schedule an appointment with Town staff to review the same.
- (3) Scope of review. Town staff will review the preliminary site plan in an effort to promote greater efficiency in the formal review process. Such review will be limited to technical issues within the areas of Town staff's

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expertise. While Town staff may offer opinions on the viability of a particular site modification, improvement or design, compliance with these rules and/or the probability of securing waivers therefrom, all such comments are nonbinding and shall not be construed by the applicant to constitute instructions or directives of a binding nature.

- (4) Waiver of submittal requirements. The Board, or in the case of a minor site plan its designee, may waive strict compliance with any submittal requirement set forth in § **175-80B** or **175-81B** of these rules. Applicants seeking such waivers shall meet with the Board in the case of a major site plan, or its designee in the case of a minor site plan, to obtain such waivers prior to the formal submittal.

C. Waiver of design standards. The Planning Board, or its designee in the case of a minor site plan review, may waive any of the design standards set forth in § **175-82** where such waiver is not inconsistent with public health and safety, and where such waiver does not derogate from the purposes of site plan review because the proposed development will adequately serve such goals and objectives, especially in the case of renovation where a full review is determined to be unnecessary.

D. Approval.

- (1) The Board, or its designee in the case of a minor site plan review, may approve an application subject to such reasonable conditions as may be necessary and/or appropriate to:
  - (a) Enforce compliance with substantive requirements of § **175-82**, unless waived; and
  - (b) Protect the health, safety, convenience and general welfare of the inhabitants of the Town of Lexington.
- (2) Among its conditions, the Board, or its designee in the case of a minor site plan review, may require the provision of adequate security by the applicant, in such form and amount as may be determined by the Board or its agents, to ensure the satisfactory completion of all improvements required by its site plan approval, exclusive of those being made to privately owned structures. The Planning Board, or its designee in the case of a minor site plan review, may also require a formal commitment of future compliance, including monitoring program post-permit issuance for compliance purposes for a time period as may be specified in the site plan approval.

E. Disapproval. The Board, or its designee in the case of a minor site plan review, may disapprove an application where:

- (1) The application is incomplete in that the applicant has failed to submit the forms, plans, reports, studies, fees, and other documentation required by § **175-80B** or **175-81B** of these rules, has been so notified and has failed to remedy the same; or
- (2) The imposition of reasonable conditions will not ensure the project's compliance with the substantive requirements of § **175-82**; or

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- (3) The imposition of reasonable conditions will not adequately protect the health, safety, convenience and general welfare of the inhabitants of the Town of Lexington, or the public interest; or
  - (4) The project, as proposed, does not comply with the bylaw.
- F. Lapse. Site plan approval by the Board shall lapse if building permits for development of the project, where required, have not been issued within two years from the date of approval. The Board may grant an extension of time upon the written request of the applicant for good cause shown.
- § 175-80. Minor site plan.
- A. Applicability. An application made pursuant to § 135-9.5.2 of the bylaw and not deemed a major site plan under § 175-81A shall be deemed a minor site plan.
  - B. Required submittals. An applicant shall submit one copy of its application for review of a minor site plan to the Town Clerk and 10 copies of the same to the designee.
    - (1) The designee may require a minor site plan to include, or be accompanied by, any information and items required by § 175-81B of these rules. However, minor site plans shall normally be required to contain only a plot plan, showing the location of all buildings and structures on the lot and including existing conditions and proposed changes, if applicable.
    - (2) A fee shall be required pursuant to § 175-12D(7) of the Planning Board's rules and regulations.
  - C. Decision by the designee. A minor site plan shall be reviewed by the designee in accordance with the standards set forth herein. The designee shall, after review of the minor site plan, file a written decision within 60 days of receipt of the application in the office of the Town Clerk, and notify the applicant of his/her decision. The required time limits for the filing of such decision may be extended by written agreement of the applicant and the designee, and a copy of such agreement shall be filed in the office of the Town Clerk. Failure by the designee to act within such sixty-day period shall be deemed to be approval of the minor site plan. The applicant who seeks such approval by reason of the failure of the designee to act within the time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said 60 days or extended time, if applicable, of such approval.
  - D. Appeal. The decision of the designee regarding a minor site plan may be appealed to the Planning Board. Such appeal shall be filed with the Board within 14 days of the filing of the designee's decision with the Town Clerk. The appeal of a minor site plan shall conform to the requirements of § 175-81D with the exception that the decision of the Planning Board shall be filed with the Town Clerk within 60 days of the date the appeal is filed. All costs of mailed notice and publication of notice shall be borne by the party appealing the decision.

§ 175-81. Major site plan.

- A. Applicability. An application made pursuant to § 135-9.5.4.1 of the bylaw shall be deemed a major site plan when:

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- (1) Exterior construction or expansion of structures which results in an increase of more than 8,000 square feet of total building gross floor area in any three-year period; or
  - (2) The available parking on the site is increased by more than 24 parking spaces in any three-year period.
- B. Required submittals. An applicant shall submit one copy of its application for review of a major site plan to the Town Clerk and 10 copies of the same to the Board, including, unless waived pursuant to § **175-79B(4)**, all of the following materials:
- (1) A definitive site development plan, as described in § **175-11**, except that applicants may omit a property rights plan and traffic analysis.
  - (2) A landscaping plan as described in § **175-11A(7)**.
  - (3) A lighting plan, as described in § **175-11A(11)**.
  - (4) If applicable, the Parking and Transportation Demand Management (PTDM) plan described in § **135-7.2.6** of the bylaw and proof of payment of the transportation mitigation fee described in § **135-7.2.5** of the bylaw.
  - (5) Proposals for mitigating measures or the construction of improvements to address the impacts, other than traffic impacts, of the proposed development and to provide sufficient capacity in Town facilities and services.
  - (6) A checklist showing compliance with, or waivers sought from, the design standards of § **175-82**. Any waiver request shall be accompanied by a written statement indicating why such waiver should be granted.
  - (7) A list indicating which items on the LEED Core and Shell Scorecard, or equivalent scorecard, are intended to be included in the design and construction of the building(s).
  - (8) A copy, if any, of the determination of applicability issued by or the notice of intent filed with the Conservation Commission of the Town of Lexington pursuant to MGL c. 131, § 40, or Chapter **130** of the General Bylaws of the Town of Lexington.
  - (9) A fee as per § **175-12D(7)** of the Planning Board's rules and regulations. All costs of mailed notice and publication of notice shall be borne by the applicant. The Board shall also charge, at its discretion in appropriate cases, a technical review fee pursuant to MGL c. 44, § 53G, which may be used to pay for the services of a consulting attorney, civil engineer, traffic engineer, architect, landscape architect, or other professional. Failure to pay the administrative fee or technical review fee as required shall render the application incomplete.
- C. Notification of other Town boards and officials. The Board shall provide copies of the materials submitted to the Town's Zoning Board of Appeals, Board of Health, Conservation Commission, Department of Public Works, Fire Department, Police Department, Economic Development Officer, Design Advisory Committee, Transportation Advisory Committee, Traffic Mitigation Group, Transportation Safety Committee, Building Commissioner, and the Board

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of Selectmen. Each Board, Commission or Department may, within 30 days of receiving a copy of the complete application, submit to the Board written comments for the Board to consider in the disposition of the application. Failure to respond within 30 days, as aforesaid, shall be deemed a lack of opposition to the application.

D. Procedures.

- (1) Public hearing. The Planning Board shall conduct a public hearing after publication, posting and notice as set forth in MGL c. 40A, § 11.
- (2) Majority required. The decision of the Planning Board shall be by majority vote of the Board as constituted (i.e., three affirmative votes).
- (3) Filing; time limits. The Planning Board shall render a written decision, by majority vote, and file such decision in the office of the Town Clerk within 60 days of the date of application. The required time limits for the filing of such decision may be extended by written agreement of the applicant and the Board, and a copy of such agreement shall be filed in the office of the Town Clerk. Failure by the Board to act within such sixty-day period shall be deemed to be approval of the major site plan. The applicant who seeks such approval by reason of the failure of the Board to act within the time prescribed shall notify the Town Clerk, in writing, within 14 days from the expiration of said sixty days or extended time, if applicable, of such approval and that notice has been sent by the applicant to parties in interest as defined in MGL c. 40A, § 11. The applicant shall send such notice to parties in interest by mail, and each notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17 and shall be filed within 20 days after the date the Town Clerk received such written notice from the applicant that the Board failed to act within the time prescribed.

- E. Appeal. Any person aggrieved by a decision of the Board made pursuant to § 175-81 of these rules, may appeal said decision to a court of competent jurisdiction pursuant to MGL c. 40A, § 17.

§ 175-82. Design standards.

The following standards shall apply to applications for site plan review unless waived pursuant to § 175-79C.

- A. Lighting; signs. Lighting standards shall be the same as those set forth in §§135-5.4.4 through 135-5.4.6 of the Zoning Bylaw, as may be amended; provided, however, that the applicant shall also demonstrate that internal lighting shall not cause overspill onto abutting properties or the street or into the night sky. Sign standards shall be those set forth in § 135-5.2.8 of the bylaw.
- B. Noise. Noise standards shall be the same as those set forth in § 80-4 of the Code of Lexington, as may be amended.
- C. Landscaping. Landscaping standards shall be the same as those set forth in §§ 135-5.3.4 through 5.3.10, 5.3.13, 5.3.14 and 5.1.13.9 of Zoning Bylaw, as may be amended.

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- D. Stormwater management. Stormwater management standards shall be the same as those set forth in Chapter 114 of the Code of Lexington and the rules and regulations of the Board of Health, as may be amended. In addition, all stormwater management facilities shall comply with the Department of Environmental Protection's Stormwater Management Regulations, 314 CMR 21.00 et seq., as may be amended.
- E. Site development standards.
- (1) Land disturbance. Site and building design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage on the site.
  - (2) Clearing for utility trenching. Clearing for utility trenching shall be limited to the minimum area necessary to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees.
  - (3) New sites. Placement of new buildings, structures, or parking facilities shall blend with the natural landscape. New building sites shall be directed away from the crest of hills, and foundations shall be constructed to reflect the natural terrain. Sites shall be designed in such a way as to avoid impacts to rare and endangered species and wildlife habitat on a site, and to maintain contiguous forested areas.
  - (4) Archeological or historical resources. The proposed development shall be consistent with the applicable standards of the Historical Commission and the Massachusetts Historical Commission.
  - (5) Preservation of existing vegetation. Priority shall be given to the preservation of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees. Understory vegetation beneath the dripline of preserved trees shall be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained shall be surrounded by temporary protective fencing or other measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential root zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state.
  - (6) Removal of invasive species. The removal of invasive species shall be required except when their removal would lead to unnecessary or unneeded clearing, such as a large stand of mature trees.
  - (7) Limit of clearing. Development envelopes for structures, driveways, wastewater disposal, lawn areas and utility work shall be designated to limit clearing and grading. Clearing of vegetation and alteration of topography shall be replicated with native vegetation planted in disturbed areas.

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- (8) Location of construction activities. In order to minimize the clearing and grading on a site associated with construction activities such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, such activities may be limited to areas already planned for permanent structures. Topsoil shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.
  - (9) Finished grade. Finished grades in disturbed areas should be limited to no greater than a 3:1 slope (rise over run), while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible. Finished grade shall be no higher than the trunk flares of trees to be retained, unless tree wells are used.
  - (10) Phasing of development. The extent of a site exposed at any one time through phasing of construction operations shall be limited. Effective sequencing shall occur within the boundaries of natural drainage areas.
  - (11) Revegetation. Proper revegetation techniques shall be employed during construction using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Revegetation shall occur on cleared sites during the first planting season appropriate to the selected plant species. Proposed landscaping shall require native and drought-tolerant species and prohibit invasive or nonnative plants.
  - (12) Topsoil. A minimum of six inches of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.
  - (13) Irrigation. In general, the need for irrigation shall be avoided through the use of appropriate planting. The Planning Board may require that water for the purpose of irrigation shall be provided by an on-site well, cisterns, or other acceptable and feasible method.

F. Pedestrian and vehicular access; traffic management.

- (1) Access. Access via roadways abutting residential districts shall be avoided where possible. Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Planning Board.
- (2) Driveways. All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way for vehicular turning movements in or out of the site and safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.
- (3) Curb cuts. Curb cuts shall be limited to the minimum width for safe entering and exiting. The location of driveway openings in relation to traffic and to adjacent streets shall provide for the convenience and safety of vehicular and pedestrian movement within the site. The number of curb cuts shall be minimized.
- (4) Interior circulation. The proposed development shall assure safe interior circulation within its site by separating pedestrians, bikeways, and vehicular traffic. Internal circulation shall also be planned to accommodate existing or planned transportation demand management services such as,

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but not limited to, public transit, ride sharing and/or shuttle services. Traffic calming measures such as crosswalks, bike lanes, rumble strips and landscaped islands shall be required, where appropriate, within the site to maximize pedestrian and cyclist safety.

- (5) Transportation plan approval. Developments where the applicant elects to proceed under the provisions of § 135-7.2.5 of the Zoning Bylaw shall be consistent with both the Parking and Transportation Demand Management (PTDM) plan described in § 135-7.2.6 of the bylaw and the TMO District plan described in § 135-7.4.2 of the bylaw.
- (6) Sight distance. Acceptable sight distance shall be provided and maintained at all access and egress locations. At a minimum, these site distances shall meet the stricter of the Massachusetts Highway Department and American Association of State Highway Transportation Officials standards for safe stopping sight distances.
- (7) Maximum parking. The development shall provide no more parking than that needed to serve the needs of reasonably anticipated activities and uses.
- (8) Pedestrian and bicycle safety. Pedestrian and bicycle circulation, and the amenities required thereof, on and off site, shall be in accordance with § 135-5.1.8 of the Zoning Bylaw and the following requirements:
  - (a) All development and redevelopment shall provide for pedestrian and bicyclist connections on the property and allow for possible future connections with adjoining properties.
  - (b) Pedestrian access shall connect to all building entrances with further connections to local pedestrian arteries.
  - (c) Proposed development and redevelopment shall provide sufficient rights-of-way on their properties to accommodate expected needs for bicycle and pedestrian use.
  - (d) Sidewalks, crosswalks, walkways, bike racks or other pedestrian access shall be provided to allow access to adjacent properties and between individual businesses within a development.
  - (e) If the property abuts a public bikeway/right-of-way, a paved access route to the bikeway may be required.
- (9) Location of parking areas. Where feasible, parking areas shall be located to the side or behind buildings so as to provide an appropriate setting for the building within the context of the site and neighborhood and allow parking areas to be shared with adjacent businesses. The Planning Board may require alternative studies of parking lot layouts. Except where physical constraints, site configuration, or safety considerations preclude strict compliance, all parking shall be accessible by driveways to the parking lots of adjacent nonresidential uses and land zoned for nonresidential uses.

G. Aesthetics. In determining the appropriateness of buildings, design elements of proposed buildings shall be evaluated in relation to existing buildings adjacent

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or surrounding buildings. The Planning Board shall not consider interior arrangements. The back and sides of each building shall be given architectural care particularly if available for view by the public.

H. Utilities.

- (1) Wastewater. There shall be sufficient capacity to meet the flow demands of the proposed use in accordance with the standards of the Department of Public Works, the Board of Health, and the Massachusetts Department of Environmental Protection.
- (2) Water. There shall be sufficient water capacity to meet the flow demands of the proposed use as verified by the Department of Public Works.
- (3) Underground. All electrical, cable and telecommunications services shall be installed underground.